SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948.

No. 563.

THE UNITED STATES OF AMERICA, APPELLANT,

vs.

YELLOW CAB COMPANY, CHICAGO YELLOW CAB COMPANY, INC., PARMELEE TRANSPORTATION COMPANY, *et al.*

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

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No. 218	Exhibit "3" attached to Chicago Yellow's Answer (answer to plaintiff's Interrogatory No. 9 (b) (1))	2142	1290
No. 219	Exhibit "4" attached to Chicago Yellow's Answer (answer to Plaintiff's Interrogatory No. 9 (b) (2))	2142	1290
No. 220	Exhibit "5" attached to Chicago Yellow's Answer (answer to plaintiff's Interrogatory No. (9) (c) (1), (2) and (3))	2142	1290
No. 221	Yellow's Answer to Plaintiff's Interrogatory No. 9	2142	1290
No. 222	Plaintiff's Interrogatory No. 10	2142	1290
No. 223	CCM'S Answer to Plaintiff's Interrogatory No. 10	2142	1290
No. 224	Parmelee's Answer to Plaintiff's Interrogatory No. 10	2143	1290
No. 225	Chicago Yellow's Answer to Plaintiff's Interrogatory No. 10	2143	1290
No. 226	Yellow's Answer to Plaintiff's Interrogatory No. 10	2143	1290
No. 227	Cab Sales' Answer to Plaintiff's Interrogatory No. 10	2143	1290
No. 228	Checker's Answer to Plaintiff's Interrogatory No. 10	2143	1290
No. 229	Plaintiff's Interrogatory No. 13	2143	1290

		Original	Print
No. 230	Parmelee's Answer to Plaintiff's Interrogatory No. 13	2143	1291
No. 231	Plaintiff's Interrogatory No. 11	2143	1291
No. 232	CCM's Answer to Plaintiff's Interrogatory No. 11	2143	1291
No. 233	Nov. 18, 1937, Minutes of Directors Meeting of Chicago Yellow	2144	1291
No. 234	Nov. 18, 1937, Minutes of Directors Meeting of Yellow	2145	1292
No. 235	Dec. 20, 1938, Minutes of Directors Meeting of Utilities	2145	1293
No. 236	Oct. 19, 1939, Minutes of Directors Meeting of Utilities	2146	1294
No. 237	Oct. 27, 1943, Minutes of Directors Meeting of Utilities	2147	1295
No. 238	November 13, 1937, Letter from Rank, President of Parmelee to Samuels, V. P. of Yellow	2148	1296
No. 239	March 8, 1938, Minutes of Directors Meeting of Parmelee	2148	1296
No. 240	March 23, 1938, Letter from Rank of Parmelee to Freimark, President of Cab Sales	2149	1297
No. 241	July 20, 1938, Minutes of Directors Meeting of CCM	2149	1297
No. 242	July 25, 1938, Minutes of Directors Meeting of Parmelee	2151	1299
No. 243	July 19, 1939, Minutes of Directors Meeting of CCM	2151	1300
No. 244	Sept. 30, 1939, Agreement between CCM and Parmelee	2154	1303
No. 245	Sept. 28, 1939, Minutes of Directors Meeting of Cab Sales	2154	1303
No. 246	Oct. 17, 1939, Minutes of Directors Meeting of CCM	2156	1305
No. 247	Oct. 31, 1939, Letter from Oakland of CCM to Sokoll of Checker	2157	1307
No. 248	January 22, 1940, Letter from Kirkland, Fleming, Green, Martin & Ellis to Securities & Exchange Commission, with attachments	2157	1307
No. 250	Oct. 31, 1941, Memorandum from C. P. G. Fuller *re* Casualty Company	2159	1309
No. 251	March 23, 1944, Minutes of Directors Meeting of Chicago Yellow	2160	1309
No. 252	March 23, 1944, Minutes of Directors Meeting of CCM	2160	1310
No. 253	March 30, 1944, Letter from Wyatt, Treasurer of Parmelee to C. P. G. Fuller	2161	1310

		Original	Print
No. 254	Plaintiff's Interrogatory No. 26	2161	1311
No. 255	CCM's Answer to Plaintiff's Interrogatory No. 26	2161	1311
No. 256	Markin's Answer to Plaintiff's Interrogatory No. 26	2161	1311
No. 257	Parmelee's Answer to Plaintiff's Interrogatory No. 26	2161	1311
No. 258	Chicago Yellow's Answer to Plaintiff's Interrogatory No. 26	2162	1312
No. 259	Yellow's Answer to Plaintiff's Interrogatory No. 26	2162	1312
No. 260	Cab Sales' Answer to Plaintiff's Interrogatory No. 26	2163	1312
No. 261	Checker's Answer to Plaintiff's Interrogatory No. 26	2163	1313
No. 262	Oct. 25, 1939, Letter from Rank to Wyatt	2163	1313
No. 263	Nov. 8, 1939, Letter from Wyatt to Sokoll of Cab Sales, with attachment	2163	1313
No. 264	Plaintiff's Interrogatory No. 27	2164	1313
No. 265	Yellow's Answer to Plaintiff's Interrogatory No. 27	2164	1314
No. 266	Cab Sales' Answer to Plaintiff's Interrogatory No. 27	2164	1314
No. 267	Checker's Answer to Plaintiff's Interrogatory No. 27	2164	1314
No. 268	Parmelee's Answer to Plaintiff's Interrogatory No. 27	2165	1314
No. 269	April 1, 1938, Minutes of Directors Meeting of Chicago Yellow	2166	1316
No. 270	Dec. 17, 1938, Letter from Bieze, Treasurer of Chicago Yellow to Oakland, V. P. of CCM, with attachment	2167	1316
No. 271	Dec. 31, 1938, Agreement of CCM.	2167	1317
No. 272	June 18, 1943, Letter from Samuels of Chicago Yellow, to Albert L. Marks ..	2168	1317
No. 273	July 29, 1938, Letter from Oakland to Markin	2169	1318
No. 274	August 1, 1941, Letter from Markin to Samuels, President, Chicago Yellow.....	2169	1319
No. 275	Oct. 15, 1941, Letter from Wyatt, Treasurer of Parmelee, to Bieze, Treasurer Yellow Cab	2170	1320
No. 276	Dec. 14, 1939, Letter from Bieze of Yellow, to Rank, President of Parmelee.	2170	1320
No. 277	Dec. 14, 1939, Letter from Bieze to Rank, with attachments	2171	1321
No. 278	Dec. 19, 1945, Letter from Bieze to Markin	2171	1321

		Original	Print
No. 279	June 28, 1930, Letter from E. S. Higgins, V. P. of TMC, to Samuels of Yellow	2171	1321
No. 280	July 19, 1933, Letter from T. V. Hogan to Morris Markin with handwritten notation	2171	1322
No. 281	Jan. 16, 1941, Letter from Bieze to Oakland of CCM	2172	1322
No. 282	June 8, 1944, Letter from Oakland, V. P. of CCM, to Bieze, V. P. of Yellow	2172	1322
No. 283	June 21, 1944, Letter from Bieze to Oakland, with attachments	2172	1322
No. 284	April 25, 1940, Memorandum from Rank to Markin	2172	1323
No. 285	April 26, 1940, Letter from Rank to Hogan, President of Yellow	2173	1323
No. 286	March 11, 1941, Letter from Rank to Bieze	2173	1324
No. 287	May 7, 1940, Letter from Oakland, of CCM, to Bieze of Yellow	2173	1324
No. 288	June 6, 1940, Letter from Oakland to Bieze	2174	1324
No. 289	June 10, 1940, Letter from Bieze to Oakland	2174	1324
No. 290	September 19, 1933, Letter from Markin to Samuels of Yellow	2174	1324
No. 291	August 24, 1939, Letter from Rank to Hogan and Bieze of Yellow	2175	1325
No. 292	March 15, 1940, Letter from Rank to Hogan and Bieze	2175	1325
No. 293	November 19, 1945, Letter from Bieze to Markin	2175	1326
No. 294	November 20, 1945, Letter from Markin to Bieze	2176	1326
No. 295	November 27, 1941, Letter from Oakland to Bieze	2176	1326
No. 296	November 30, 1945, Letter from Oakland to Sokoll of Cab Sales	2176	1326
No. 297	April 23, 1929, Minutes of First Directors Meeting of Automotive Sales Corporation	2177	1327
No. 298	April 1929, Agreement between CCM and Automotive	2178	1328
No. 299	April 29, 1929, Letter from Markin of CCM to Automotive	2179	1329
No. 300	August 2, 1930, Letter from A. G. Steckler of TMC to Oakland of CCM.	2179	1329
No. 301	September 26, 1930, Letter from Preston of TMC to Automotive	2179	1329

		Original	Print
No. 302	September 29, 1930, Minutes of Directors Meeting of Automotive	2179	1329
No. 303	December 29, 1930, Minutes of Directors Meeting of Automotive	2180	1330
No. 304	March 30, 1931, Minutes of Directors Meeting of Automotive	2180	1330
No. 305	December 21, 1931, Minutes of Directors Meeting of Automotive	2181	1331
No. 306	November 28, 1932, Minutes of Directors Meeting of Automotive with attachments	2181	1331
No. 307	May 21, 1931, Minutes of Directors Meeting of Yellow	2183	1333
No. 308	April 18, 1935, Minutes of Executive Committee of CCM.	2184	1334
No. 309	August 21, 1935, Letter from Rank to Samuels of Yellow	2184	1335
No. 310	August 22, 1935, Letter from Samuels to Rank	2185	1335
No. 311	September 3, 1935, Letter from Hogan, President of Yellow, to Rank, with attachment consisting of letter dated September 3, 1935 from Hogan, President of Yellow to CCM attention: Oakland	2185	1335
No. 312	September 4, 1935, Letter from Hogan of Yellow to Rank, with attachment consisting of letter dated September 4, 1935, from Hogan to CCM, attention: Oakland	2186-A	1337
No. 313	September 10, 1935, letter from Bieze of Yellow, to Rank, with attachment consisting of letter dated September 6, 1935 from Oakland of CCM to Hogan of Yellow	2186-A	1338
No. 314	November 7, 1935, Letter from R. E. Stouffer, Vice President of Yellow, to Tuttle of CCM	2187	1339
No. 315	November 27, 1935, Letter from Bieze of Yellow to Rank, with attachment consisting of letter dated November 25, 1935 from Oakland of CCM to Yellow	2187	1339
No. 316	December 2, 1935, Letter from Rank of Parmelee to Bieze of Yellow	2188	1339
No. 317	December 26, 1935, Letter from Rank of Parmelee to Oakland of CCM	2188	1340
No. 318	December 30, 1935, Memorandum from Oakland to Rank	2188	1340
No. 319	December 13, 1935, Letter from Samuels of Yellow to CCM	2189	1341
No. 320	December 16, 1935, Letter from Oakland of CCM to Yellow	2190	1341

		Original	Print
No. 321	December 23, 1935, Letter from Samuels of Yellow to CCM	2190	1342
No. 322	January 17, 1936, Letter Agreement between Yellow and CCM	2190	1342
No. 323	October 21, 1936, Letter Agreement between Yellow and CCM	2191	1343
No. 324	August 16, 1937, Letter from Oakland of CCM to Markin	2192	1343
No. 325	June 8, 1939, Letter from Frank Magann to Hogan of Yellow	2192	1344
No. 326	June 13, 1939, Letter from Hogan of Yellow to Magann	2192	1344
No. 327	July 1, 1939, Minutes of Directors Meeting of Yellow	2193	1345
No. 328	October 3, 1939, Minutes of Directors Meeting of Parmelee	2194	1346
No. 329	Oct. 19, 1929, Minutes of Directors Meeting of Yellow	2195	1347
No. 330	October 20, 1939, Agreement between Yellow and CCM	2196	1348
No. 331	June 12, 1941, Letter from Adams Oil Company to Yellow	2196	1348
No. 332	June 14, 1941, Letter from Samuels of Yellow to Adams Oil Company	2196	1348
No. 333	August 20, 1945, Letter from Oakland to Bieze	2196	1349
No. 334	August 15, 1945, Letter Agreement between Yellow and Checker	2196	1349
No. 335	September 17, 1945, Minutes of Directors Meeting of CCM	2197	1350
No. 336	August 26, 1936, Letter from Rank to Oakland of CCM	2199	1351
No. 337	January 25, 1937, Letter from Oakland to Sokoll	2199	1351
No. 338	February 19, 1937, Letter from Rank of Parmelee to Cook of Yellow	2199	1351
No. 339	July 25, 1938, Letter from Oakland of CCM to Bieze of Yellow	2199	1351
No. 340	August 1, 1938, Letter from Bieze of Yellow to Oakland of CCM	2199	1352
No. 341	August 14, 1940, Letter from Rank of Parmelee to Oakland of CCM	2200	1352
No. 342	December 26, 1941, Letter from Oakland to Bieze with attachment	2200	1352
No. 343	January 12, 1942, Letter from Oakland of CCM to Bieze of Yellow	2201	1353
No. 344	June 4, 1943, Letter from Secretary of R. E. Oakland to Bieze of Yellow	2201	1353
No. 345	July 5, 1945, Letter from Knox to Oakland	2201	1353

		Original	Print
No. 346	October 30, 1945, Letter from Beize of Yellow to Markin	2201	1353
No. 347	September 5, 1941, Letter from Samuels of Yellow to Oakland of CCM	2201	1354
No. 348	September 6, 1941, Letter from Oakland of CCM to Samuels of Yellow	2202	1354
No. 349	September 8, 1941, Letter from Samuels to Oakland	2202	1354
No. 350	September 9, 1941, Letter from Oakland to Samuels	2203	1355
No. 351	September 11, 1941, Letter from Vice President of CCM to Samuels	2203	1355
No. 352	November 26, 1934, Minutes of Directors' Meeting of Parmelee	2203	1355
No. 353	October 6, 1936, Letter from Oakland of CCM to C. P. G. Fuller	2205	1357
No. 354	October 13, 1936, Letter from Oakland to Fuller	2205	1358
No. 355	August 12, 1938, Letter from Fuller to Rank	2206	1358
No. 356	Journal of the Proceedings of the City Council of the City of Chicago, Illinois. Regular Meeting, Wednesday, September 25, 1929, at 2:00 P. M.	2208	1362
No. 357	January 22, 1934, Memorandum from Markin to Hogan, *et al.*	2211	1365
No. 358	April 17, 1934, Letter from Rank to Bieze with attachments consisting of letter dated April 20, 1934 from Bieze to Rank, draft of proposed notice to stockholders, memorandum dated April 14, 1934, from E. M. S. to Rank, and newspaper clipping	2211	1365
No. 359	June 21, 1934, Minutes of Directors' Meeting of Yellow	2213	1367
No. 360	June 21, 1934, Minutes of Directors Meeting of Chicago Yellow	2218	1373
No. 361	April 11, 1934, Letter from T. B. Hogan to Hinkel	2218	1373
No. 363	March 18, 1935, Memorandum from Rank to Markin	2220	1375
No. 364	August 16, 1935, Letter from Rank of Parmelee to Kirkland, Fleming, Green & Martin, with attachment consisting of letter dated August 16, 1935, from Rank to Board of Directors of Yellow	2221	1375
No. 365	September 19, 1935, Minutes of Directors Meeting of Yellow	2222	1377
No. 366	September 19, 1935, Minutes of Directors Meeting of Chicago Yellow	2223	1378

		Original	Print
No. 367	June 14, 1937, Letter from Rank to Board of Directors of Yellow	2224	1379
No. 368	June 15, 1937, Minutes of Directors Meeting of Parmelee	2226	1382
No. 369	June 16, 1937, Minutes of Directors Meeting of Yellow	2227	1382
No. 370	June 23, 1937, Letter from Rank to Samuels of Yellow	2228	1383
No. 371	June 25, 1937, Letter from Samuels to Rank	2228	1383
No. 372	June 26, 1937, Letter from Samuels of Yellow to Board of Directors of Yellow.	2228	1384
No. 373	July 15, 1937, Minutes of Directors Meeting of Yellow	2229	1385
No. 374	June 23, 1937, Letter from Rank to Scholz	2230	1385
No. 375	August 9, 1937, Letter from C. P. G. Fuller to "Ben" [Samuels of Yellow]	2230	1385
No. 376	August 18, 1937, Letter from Howard Ellis to Samuels	2231	1387
No. 376(a)	August 27, 1937, Letter from Ellis to Chicago Yellow, Attention Samuels	2232	1388
No. 377	September 15, 1937, Letter from Chadbourne, Hunt, Jaeckel & Brown to Parmelee	2235	1392
No. 379	August 30, 1937, Letter from Samuels to Ellis	2238	1394
No. 380	August 31, 1937, Letter from Ellis to Samuels, with attachment consisting of rough draft copy of proposed Yellow-Checker contract	2239	1395
No. 381	December 2, 1937, Letter from Rank to Samuels	2244	1401
No. 382	December 7, 1937, Letter from Oakland to Sokoll of Checker	2244	1401
No. 383	July 8, 1937, Letter from Sokoll to Rank, with attachment	2245	1402
No. 384	Listing by Checker of Cabs Withdrawn from Service and not replaced April, May, June, July, August, and September, 1937	2245	1402
No. 385	December 28, 1937, Letter from Sokoll to Markin, with attachment	2246	1402
No. 386	Plaintiff's Interrogatory No. 25	2246	1403
No. 387	Checker's Answer to Plaintiff's Interrogatory No. 25	2247	1403
No. 388	Journal of the Proceedings of the City Council of the City of Chicago, Illinois, Regular Meeting, Wednesday, December 22, 1937 at 2:00 o'clock P. M., Council Chamber, City Hall	2248	1403

		Original	Print
No. 389	December 29, 1937, Minutes of Directors Meeting of Parmelee	2250	1406
No. 390	January 6, 1938, Letter from Fuller to Rank	2250	1406
No. 391	January 3, 1938, Minutes of Directors Meeting of Checker	2251	1407
No. 392	January 3, 1938, Agreement between Yellow, Cab Sales, and Checker	2251	1407
No. 393	January 24, 1938, Minutes of Directors Meeting of Yellow	2257	1414
No. 394	August 17, 1939, Letter from Oakland to Markin, with attachment	2258	1415
No. 395	No date, Letter from Laird of Parmelee Motor Fuel to Stouffer of Chicago Yellow	2259	1416
No. 396	August 9, 1945, Letter from Bieze to Oakland, with attachment	2259	1417
No. 398	Index to Volume of Records on Cab Sales, Etc., with certain attached records and tables	2263	1419
No. 398(a)	Index to Volume of Records on Yellow, etc. with certain attached records and tables	2266	1421
No. 398(b)	Index to Volume of Records on Yellow and Chicago Cab Operating Companies with certain attached records and tables.	2269	1424
No. 399	November 1, 1944, Letter from Laird of Parmelee Motor Fuel Co. to Markin	2270	1425
No. 400	February 15, 1946, Letter from Edward J. Gorman, Commissioner, City of Chicago, Public Vehicle License Commission to Leonard Bessman, Antitrust Division, with attachment consisting of listing of the number of taxicabs licensed in the City of Chicago from 1929 to 1945, inclusive	2270	1425
No. 401	February 4, 1943, Letter from Bieze of Yellow to Wyatt of Parmelee	2272	1426
No. 402	February 24, 1943, Letter from Bieze to Rank, with attachment	2272	1426
No. 403	February 1, 1944, Letter from McMath of TMC to Bieze of Yellow	2272	1426
No. 404	October 17, 1944, Letter from "Danny" to "Rudolph"	2273	1427
No. 405	November 1, 1944, Letter from Bieze to Markin	2273	1427
No. 406	November 1, 1944, Letter from Bieze to Dannemann	2273	1427
No. 407	May 25, 1945, Letter from Vice President of Yellow to James R. Quinn	2273	1427

		Original	Print
No. 408	May 29, 1945, Letter from Bieze to Markin	2274	1428
No. 409	May 31, 1945, Letter from Markin to Bieze	2274	1429
No. 410	June 12, 1945, Letter from Samuels to James R. Quinn	2275	1429
No. 411	Journal of the Proceedings of the City Council of the City of Chicago, Illinois, Regular Meeting, Tuesday, June 26, 1945, at 10:30 o'clock A. M. (Council Chamber, City Hall, Chicago, Illinois), Official Record	2275	1429
No. 412	July 17, 1945, Notice from Yellow by Bieze	2275	1430
No. 413	July 26, 1945, Letter from Samuels to Markin, with attachment	2276	1430
No. 414	July 27, 1945, Letter from Markin to Samuels of Yellow	2277	1432
No. 415	June 28, 1945, Letter from Oakland of CCM to Bieze of Yellow	2278	1432
No. 416	October 26, 1945, Letter from William W. Cloud to Samuels of Yellow	2278	1433
No. 417	October 29, 1945, Letter from Samuels of Yellow to William W. Cloud	2279	1433
No. 418	December 10, 1942, Letter from Dudley, Duvall & Dudley to Yellow	2281	1435
No. 419	December 14, 1942, Letter from Samuels of Yellow to Dudley	2281	1436
No. 420	Journal of the Proceedings of the City Council of the City of Chicago, Illinois, Regular Meeting, Friday, December 28, 1945 at 2:00 o'clock P. M.	2282	1437
No. 421	Journal of the Proceedings of the City Council of the City of Chicago, Illinois, Regular Meeting, Wednesday, January 16, 1946 at 10:30 o'clock A. M.	2283	1438
No. 422	Opinion by Judge Michael Feinberg entered in Circuit Court of Cook County in *Yellow Cab Company* v. *City of Chicago, et al.*	2283	1438
No. 423	January 1, 1934, Agreement between The Parmelee Company and TMC	2286	1441
No. 424	May 12, 1937, Letter from C. J. Condon to Oakland of CCM	2286	1441
No. 425	March 29, 1940, Letter from Rank of Parmelee to Bieze of Yellow	2287	1442
No. 426	Plaintiff's Interrogatory No. 3	2287	1442
No. 427	Parmelee's Answer to Plaintiff's Interrogatory No. 3	2288	1443

		Original	Print
No. 428	Plaintiff's Interrogatory No. 7.....	2288	1443
No. 429	Parmelee's Answer to Plaintiff's Interrogatory No. 7.....	2289	1444
No. 430	Oct. 16, 1939, Letter from W. A. Scheeder, General Traffic Manager of Parmelee, to C. P. G. Fuller.....	2289	1444
No. 431	March 3, 1944, Letter from C. L. Passolt of Parmelee to Director of Selective Service	2289	1444
No. 432	Aug. 1, 1944, Letter from C. L. Passolt of Parmelee to War Manpower Commission	2290	1445
No. 433	Aug. 22, 1944, Letter from Passolt to Markin, with attachment consisting of draft of letter dated Aug. 23, 1944 from Passolt to Office of Defense Transportation	2291	1446
No. 435	Sept. , 1942, Letter from Parmelee to Director of the Office of Price Administration	2293	1447
No. 436	January 12, 1943, Letter from Markin to Passolt	2294	1448
No. 438	Agreement between Parmelee and the New York, Chicago & St. Louis Railroad Company	2294	1448
No. 439	Feb. 5, 1942, Letter from Wyatt of Parmelee to Crowley of Parmelee.....	2296	1450
No. 440	Nov. 25, 1942, Memo from Landman to Wyatt, with attachments consisting of letter dated Nov. 24, 1942 from Landman to Beggs of Central Passenger Association and Siddall, of Transcontinental Passenger Association, and a letter of Oct. 28, 1942 from Landman of Parmelee to Siddall of Western Passenger Association and Beggs of Central Passenger Association	2297	1451
No. 441	Feb. 3, 1939, Letter from Fuller to Rank.	2298	1453
No. 442	Feb. 8, 1939, Letter from Rank, President of Parmelee to Fuller.....	2299	1453
No. 443	Sept. 15, 1944, Memorandum from C. P. G. Fuller for Directors of Parmelee.....	2299	1454
No. 444	Plaintiff's Interrogatory No. 28.....	2300	1455
No. 445	Yellow's Answer to Plaintiff's Interrogatory No. 28.....	2300	1455
No. 446	Cab Sales' Answer to Plaintiff's Interrogatory No. 28.....	2300	1455
No. 447	Checker's Answer to Plaintiff's Interrogatory No. 28.....	2300	1455

		Original	Print
No. 448	Plaintiff's Interrogatory No. 29	2300	1455
No. 449	Parmelee's Answer to Plaintiff's Interrogatory No. 29	2301	1455
No. 450	March 15, 1933, Minutes of Directors Meeting of Parmelee	2301	1456
No. 451	Feb. 26, 1934, Memorandum from Rank to Oakland	2302	1457
No. 452	Plaintiff's Interrogatory No. 5	2303	1457
No. 453	Yellow's Answer to Plaintiff's Interrogatory No. 5	2303	1458
No. 454	Cab Sales' Answer to Plaintiff's Interrogatory No. 5	2303	1458
No. 455	Plaintiff's Interrogatory No. 4	2304	1458
No. 456	CCM's Answer to Plaintiff's Interrogatory No. 4	2304	1459
No. 457	Parmelee's Answer to Plaintiff's Interrogatory No. 4	2304	1459
No. 458	Plaintiff's Interrogatory No. 6	2305	1460
No. 459	Parmelee's Answer to Plaintiff's Interrogatory No. 6	2306	1461
No. 460	Stipulation No. 1	2309	1463
No. 461	Stipulation No. 2	2309	1463
No. 462	Stipulation No. 3	2309	1463
No. 463	Copy of plaintiff's request for admissions under Rule 36 as directed to defendants Yellow Cab Company and Chicago Yellow Cab Company, Inc.	2309	1464
No. 464	Reply of defendants Yellow Cab Company and Chicago Yellow Cab Company, Inc., to plaintiff's request for admissions under Rule 36	2309	1464
No. 465	Plaintiff's request for admissions under Rule 36 directed to defendant Parmelee	2309	1464
No. 466	Parmelee's reply to plaintiff's request for admissions under Rule 36	2309	1464
No. 467	Plaintiff's request for admissions under Rule 36, as directed to defendants Cab Sales and Checker	2309	1464
No. 468	Reply of defendant Cab Sales to plaintiff's request for admissions under Rule 36	2309	1464
No. 469	Reply of defendant Checker to plaintiff's request for admissions under Rule 36	2309	1464
No. 470	Plaintiff's request for admissions under Rule 36, as directed to defendants CCM and Morris Markin	2309	1464
No. 471	Reply of defendant Morris Markin to plaintiff's request for admissions under Rule 36	2310	1464
No. 472	Reply of defendant CCM to plaintiff's request for admissions under Rule 36	2310	1464

		Original	Print
No. 473	Feb. 18, 1946, Letter from Wendell Berge, Assistant Attorney General, Dept. of Justice, by Melville Williams, to Chicago Yellow, attention Samuels, requesting permission to examine certain records of that company	2310	1464
No. 474	Jan. 22, 1946, Registered letter from Public Vehicle License Commissioner to Yellow Cab Company	2310	1464
No. 475	Jan. 24, 1946, letter from Yellow by Benjamin Samuels, to Edw. J. Gorman, Public Vehicle License Commissioner	2310	1465
No. 476	Jan. 22, 1946, Registered letter from Public Vehicle License Commissioner to Checker Taxi Company	2311	1466
No. 477	Jan. 24, 1946, letter from Checker, by M. M. Sokoll to Edward J. Gorman, Commissioner	2311	1466
No. 478	Feb. 28, 1946, Chicago City Council proceedings, page 5166	2312	1466
No. 479	Feb. 6, 1948, Proceedings of Chicago City Council with reference to authorization of issuance of 950 additional taxicab licenses	2312	1467
No. 480	March 1, 1948, Amendment by City Council of Chicago to regulations governing taxicabs	2314	1470
No. 481	April 10, 1946, Letter from Superintendent of Minneapolis, Minnesota, Department of Licenses, etc. to George B. Haddock, Department of Justice	2315	1471
No. 482	Dates certain cabs of Yellow were last operated prior to January 15, 1946	2316	1471
No. 483	Dates certain cabs of Checker were last operated prior to January 15, 1946	2316	1471
No. 484	Aug. 2, 1933, Letter from M. L. Middlekauff, of Kirkland, Fleming, Green & Martin, to Yellow Cab Company	2316	1471
No. 485	Aug. 10, 1933, Memorandum of Agreement between Morris Markin and Cord Corporation, signed on behalf of latter by R. S. Pruitt	2317	1472

Plaintiff's exhibits printed in their entirety:

No. 2—	April 5, 1929, Minutes of Directors' Meeting of CCM held at 165 Broadway, New York, New York	2319	1474
No. 3—	July 17, 1929, Minutes of Stockholders Meeting of CCM held at 15 Exchange Place, Jersey City, N. J.	2327	1480

	Original	Print
No. 4—April 16, 1929, Minutes of First Meeting of Directors of Parmelee held at 68 Wall St., New York, N. Y.	2339	1488
No. 6—April 26, 1929, Minutes of Directors' Meeting of Parmelee held at 68 Wall St., New York, N. Y.	2378	1512
No. 7—April 18, 1929, Minutes of Directors' Meeting of Parmelee held at 68 Wall St., New York, N. Y.	2392	1529
No. 9—May 1, 1931, Agreement between the Transportation Management Corporation and Morris Markin	2465	1574
No. 19—May 8, 1930, Management Agreement between Yellow and T. M. C.	2468	1576
No. 21—January 1, 1932, Management Contract between Yellow and T. M. C.	2478	1582
No. 55—July 19, 1932, Minutes of Directors' Meeting of Checker	2487	1588
No. 91—April 19, 1935, Minutes of Directors' Meeting of Checker	2492	1592
Defendants' exhibits:		
D- 1 Analysis of Automotive Equipment Purchased by Parmelee Since 1929	2498	1597
D- 2 National Automotive Unit Production, 1929-1947	2499	1597
D- 3 Drivers' Arrears of Service Charges Owing to Checker	2501	1599
D- 4 Decree of January 12, 1934 in Action Entitled *Checker Taxi Company* v. *O. Wergin, et al.* in United States District Court for Northern District of Illinois, Eastern Division	2502	1599
D- 5 Decree of February 25, 1946 in Action Entitled *Yellow Cab Company et ano.* v. *City of Chicago, et al.* in Circuit Court of Cook County (Feinberg, *J.*)	2513	1608
D- 6 Affirmance on January 22, 1947 by Supreme Court of Illinois of Decree of February 25, 1946 of Illinois Circuit Court in Action Entitled *Yellow Cab Company et ano.* v. *City of Chicago, et al.*	2515	1609
D- 7 Markin Stockholdings, Direct and Indirect, in CCM	2516	1611
D- 8 Markin Stockholdings, Direct and Indirect, in Parmelee	2517	1611
D- 9 Picture of CCM Model K with Specifications	2518	1612
D-10 Minutes of Directors of CCM of July 27, 1933	2519	1613

		Original	Print
D-11	Minutes of Executive Committee of Directors of CCM of August 1, 1933	2525	1617
D-12	Minutes of Special Meeting of Board of Directors of CCM of August 14, 1933	2529	1619
D-13	Computation of Cabs Sold by CCM During Periods 1923-1928 and 1929-1947	2540	1628
D-14	Taxicab Licenses and Rates in Cities of Over 50,000 Population in the United States as of April 1, 1947	2541	1629
D-15	Chart of Yellow Organization, 1910-1946	2561	1644
D-16	Excerpt from Certificate of Incorporation of Parmelee	2562	1645
D-17	Opinion of Illinois Supreme Court in Action Entitled *Yellow Cab Company, et al.* v. *City of Chicago, et al.*	2564	1646
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D-19	Provisions of Chicago Codes Requiring Cabs to Display Names of Owners on Vehicles	2591	1666
D-20	Recommendation of Public Vehicle License Commissioner for Reduction of Number of Cabs Permitted to be Operated in Chicago, of November 26, 1935	2592	1667
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Order noting probable jurisdiction		2601	1674

1 (Placita omitted.)

3 In the District Court of the United States
For the Northern District of Illinois
Eastern Division

Civil Action No. 46 C 1339

Equitable Relief Sought

UNITED STATES OF AMERICA, PLAINTIFF,

v.

YELLOW CAB COMPANY; CHICAGO YELLOW CAB COMPANY, INC.; PARMELEE TRANSPORTATION COMPANY; CAB SALES AND PARTS CORPORATION; CHECKER TAXI COMPANY; CHECKER CAB MANUFACTURING CORPORATION; and MORRIS MARKIN, DEFENDANTS.

Complaint—Filed July 25, 1946

The United States of America, by its attorneys, acting under the direction of the Attorney General, brings this complaint against the defendants named herein, and upon information and belief alleges as follows:

I

JURISDICTION AND VENUE

1. This complaint is filed and these proceedings are instituted under Section 4 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, as amended, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," said Act being commonly known as the "Sherman Act," against the defendants named herein in order to prevent and restrain violations by them of Sections 1 and 2 of said Act.

2. The defendants Yellow Cab Company, Chicago Yellow Cab Company, Inc., Parmelee Transportation Company, Cab Sales and Parts Corporation, and Checker Taxi Company transact business within the Eastern Division of the Northern District of Illinois, and are found therein.

4 II

DESCRIPTION OF THE DEFENDANTS

3. The following corporations and persons are hereby named defendants herein:

(a) Yellow Cab Company, a Maine corporation, with principal offices at 57 East 21st Street, Chicago, Illinois. This defendant is hereinafter referred to as

"Yellow." It operates the "Yellow" cabs in Chicago, Illinois, and vicinity.

(b) Chicago Yellow Cab Company, Inc., a New York corporation, with principal offices at 57 East 21st Street, Chicago, Illinois. This defendant is hereinafter referred to as "Chicago Yellow." It is a holding company owning all of the capital stock of Yellow as well as all of the capital stocks of Benzoline Motor Fuel Co., an Illinois Corporation, and Utilities Motor Fuel Co., Inc., an Indiana corporation. These two concerns sell gasoline and oil in Chicago and vicinity, primarily to cab operating companies. Chicago Yellow also owns 49 per cent of the capital stock of Transportation Maintenance Corporation, an Illinois corporation, which services and repairs cabs in Chicago, as well as 45 per cent of the capital stock of General Transportation Casualty and Surety Co., a New York corporation, which insures cab operating companies; and 7.8 per cent of the capital stock of defendant Checker Cab Manufacturing Corporation.

(c) Parmelee Transportation Company, a Delaware corporation, with principal offices at 300 North Desplaines Street, Chicago, Illinois. This defendant is hereinafter referred to as "Parmelee." It operates cabs in Chicago to transport passengers and their luggage from one railroad station to another, pursuant to contracts with railroads and railroad terminal associations. Parmelee owns 29.5 per cent of the outstanding capital stock of Chicago Yellow, and 10 per cent of the capital stock of General Transportation Casualty and Surety Co. It also owns all of the capital stock of each of the following corporations:

(1) National Transportation Co., Inc., a New York corporation, which operates cabs in New York, N. Y.;

(2) Parmelee System, Inc., a New York corporation, which, among other things, manages the operations of National Transportation Co., Inc.;

(3) Yellow Cab Company of Pittsburgh, a Pennsylvania corporation, which operates cabs in Pittsburgh, Pennsylvania;

(4) Pittsburgh Transportation Company, a Pennsylvania corporation, which also operates cabs in Pittsburgh; and

(5) Yellow Taxi Company of Minneapolis, a Minnesota corporation, which operates cabs in Minneapolis, Minnesota.

(d) Checker Cab Manufacturing Corporation, a New Jersey corporation, with principal offices at Kalamazoo, Michigan. This defendant is hereinafter referred to as "CCM." It manufactures and sells
6 cabs. CCM owns 61.75 per cent of the outstanding capital stock of Parmelee and 30 per cent of the capital stock of General Transportation Casualty and Surety Company.

(e) Cab Sales and Parts Corporation, an Illinois corporation, with principal offices at 1401 West Jackson Boulevard, Chicago, Illinois. It operates the "Checker" cabs in Chicago and vicinity. A predecessor corporation of the same name was incorporated in Delaware in 1930. In 1938, the assets of the predecessor were transferred to the defendant corporation and the predecessor was dissolved. Both concerns are hereinafter referred to as "Cab Sales." Cab Sales owns 1.59 per cent of the outstanding capital stock of Chicago Yellow, 15 per cent of the capital stock of General Transportation Casualty and Surety Co., and 51 per cent of Transportation Maintenance Corporation. It also owns 35.7 per cent of the outstanding capital stock of CCM.

(f) Checker Taxi Company, a Delaware corporation, with principal offices at 1401 West Jackson Boulevard, Chicago, Illinois. It operated "Checker" cabs in Chicago and vicinity from December 1931 until about 1941. Its predecessor of the same name, an Illinois corporation, operated "Checker" cabs in Chicago and vicinity from about 1919 until its operations were transferred to the defendant. Both concerns are hereinafter referred to as "Checker." At
7 the present time, Checker has no employees and no property other than an interest in 1000 taxicab licenses issued to it annually by the city of Chicago, which licenses are leased by it to Cab Sales for $180 per year per license. Four hundred fifty shares of the capital stock of Checker are owned by 18 former cab drivers, who possess 25 shares each, and the remaining 60,550 shares are owned by a partnership composed of Michael M. Sokoll, George McDonald, Julius Jessmer, R. E. Oakland, J. E. King, and M. H.

Freimark, each of whom are officers, directors, or former officers or directors, of either Cab Sales or CCM.

(g) Morris Markin, president of CCM, and a resident of Kalamazoo, Michigan. Markin owns all of the capital stock of Cab Sales, 12.2 per cent of the outstanding capital stock of CCM, and .13 per cent of the outstanding capital stock of Chicago Yellow.

III

Nature of the Trade and Commerce Involved

4. The city of Chicago, Illinois, is the terminus of a large number of railroads engaged in the transportation of passengers among a majority of the States of the United States. A few passengers are transported through Chicago by rail, but it is necessary for the great majority of them, including those traveling from one State to another, to get off the trains by which they traveled to Chicago, to go to another station from two city blocks to two miles distant, and to board other trains operated by other railroads. A substantial number of said passengers in interstate commerce use cabs operated by Yellow, Cab Sales,
8 Parmelee, and others, in transporting themselves and their luggage from one station to another as aforesaid.

5. Many persons, in the course of travel from their homes, offices, or hotels in Chicago to destinations in other States, commence their travel by using cabs operated by Yellow, Cab Sales, and others to transport themselves and their luggage to railroad stations in Chicago.

6. Many persons in the course of travel from points in other States to homes, hotels, and offices in Chicago complete said travel by using cabs operated by Yellow, Cab Sales, and others to transport themselves and their luggage from railroad stations in Chicago to said homes, hotels, and offices.

7. CCM manufacturers motor vehicles for use as cabs at its factory in Kalamazoo, Michigan, and ships them to Parmelee, Yellow and Cab Sales in Chicago, Illinois. CCM also ships them to subsidiaries of Parmelee in New York City, Pittsburgh, and Minneapolis. All motor vehicles purchased by Cab Sales for use as cabs, and all purchased by Chicago Yellow and the cab-operating subsidiaries of Parmelee, between the time Parmelee acquired part of their stock and the beginning of the investigation leading

to this complaint, have been manufactured by CCM and sold and shipped in interstate commerce from Kalamazoo, Michigan.

IV

Background of the Conspiracy

8. In the month of January 1929, when the conspiracy alleged herein began:

(a) Yellow, as now, was engaged in operating "Yellow" cabs in Chicago. It held 2,350, or 44 per cent of the 5,289 taxicab licenses issued by the city of Chicago; and it had never purchased cabs from CCM.

(b) Chicago Yellow, as now, owned all of the
9 capital stock of Yellow. It did not own any stock of CCM.

(c) Parmelee had not been incorporated. The present cab-operating subsidiaries of Parmelee, and their predecessors, were independent concerns. The business of transporting passengers between railroad stations in Chicago pursuant to contracts with railroads and railroad terminal associations was conducted by The Parmelee Company, a corporation which was dissolved in May 1934. Neither The Parmelee Company nor any of the present cab-operating subsidiaries of Parmelee, nor their predecessors, owned any stock of Chicago Yellow.

(d) Checker was a so-called "cooperative" cab operating company in Chicago. It held 1,750 city taxicab licenses, or 33 per cent of the 5,289 issued. Its stockholders consisted of a large number of owners of "Checker" cabs. Each stockholder contracted with Checker to pay a fee or commission for services rendered by Checker in repairing and maintaining his cabs, providing gasoline, oil, tires, and parts, insurance, licensing, and legal and other services. Each cab owner also agreed that the record title of this cab should rest in Checker, that Checker would take out city licenses for said cabs in its own name, and would permit said stockholders to use said city licenses in the operation of their cabs.

(e) CCM did not own any stock in Chicago Yellow, Checker, or The Parmelee Company.

10 (f) Markin was president and general manager of CCM.

9. The city of Chicago issued 5,289 taxicab licenses in 1929, of which, in addition to the 2,350 issued to Yellow and 1,750 to Checker, 400, or 8 per cent, were issued to DeLuxe Motor Cab Company, a substantial part of which was owned by Markin, and the remaining 789, or 15 per cent, were issued to others.

10. Prior to 1929, the ordinances of the city of Chicago did not restrict or limit the number of taxicab licenses which might be issued. In September of that year, the city of Chicago enacted an ordinance providing that no taxicab licenses should thereafter be issued unless the Public Vehicle License Commission should, after hearing, by resolution, declare that public convenience and necessity required the issuance of such licenses, provided that such declaration of public convenience and necessity should not be necessary for the licensing of the same number of taxicabs licensed for operation and operated by the applicant under the same name and colors on September 15, 1929, or the renewal annually thereafter of the same number of licenses.

11. In May 1934, the city of Chicago enacted an ordinance providing that no license should thereafter be issued except upon transfer to permit replacement of a taxicab, or, in the annual renewal of outstanding licenses, unless the Public Vehicle License Commission, after a hearing, by resolution, should declare that public convenience and necessity required additional taxicab service.

12. On December 22, 1937, the city of Chicago enacted an ordinance providing that in the event that a sufficient number of taxicab licenses should be surrendered by licensees to reduce the number of taxicabs in the city of Chicago to 3,000 on or before March 31, 1938, no taxicab license should thereafter be issued except upon transfer to permit replacement of a taxicab or in the annual renewal of any such license, or upon assignment of any such license, or upon assignment of the right to apply for such license as subsequently provided, or upon the revocation for cause or termination in any other manner of any other license. This ordinance further provided that the city of Chicago, by ordinance, might authorize the issuance of licenses in excess of 3,000 without consent of existing licensees, provided that those licensees who voluntarily surrendered any taxicab licenses or their right to renew any taxicab licenses on or before March 31, 1938, should

have the prior right to secure licenses issued above the figure of 3,000, up to the number of licenses so surrendered by them, unless such licensees should have released their right to apply for such additional licenses or should have failed to make application therefor within thirty days after publication of notice of public hearing upon the question of public convenience and necessity for the issuance of additional licenses. The ordinance further provided that as between licensees having a prior right by virtue of their surrender of licenses, to any new licenses in excess of 3,000, any additional licenses should be apportioned ratably between such licensees having such prior right in the proportion which the number of licenses surrendered by each licensee bears to the number surrendered by all licensees. The ordinance further provided that it should become effective when one or more licensees should file with the City Clerk formal written acceptance of the ordinance and should have surrendered at least 616 taxicab licenses. The 1937 ordinance expired, by its terms, on December 31, 1945, but, in June 1945, was extended for another five years.

13. The Circuit Court of Cook County held, in February 1946, in a suit by Yellow and Checker against the city of Chicago, that the acceptance of the 1937 ordinance by Yellow and Checker constituted a contract between the city of Chicago and Yellow and Checker. It also held that, by the terms of this contract, the city of Chicago was precluded from issuing taxicab licenses in excess of 3,000 without the consent of Yellow and Checker until after it had first replaced those surrendered by Yellow and Checker in 1938.

12 14. At the time of filing this complaint, about 3,275 cab licenses were outstanding in the city of Chicago, of which 1,595 were issued to defendant Yellow, 1,000 to defendant Checker, which leased them to Cab Sales, and 680 were issued to so-called "independents." (When the investigation leading to this complaint was begun early in March 1946, there were only 3,000 outstanding licenses and only 405 issued to independents.) In addition, Parmelee operates 85 non-licensed cabs in transferring passengers between railroad stations in Chicago. Defendant Markin controls the management and operations, including purchases of motor vehicles for use as cabs, of Yellow, Cab Sales, and Parmelee.

15. Some 13,000 licenses to operate cabs are now outstanding in the city of New York, of which 2,000 are held

by National Transportation Co., Inc., a wholly owned subsidiary of defendant Parmelee. The purchase of motor vehicles for use as cabs by National Transportation Co., Inc. is controlled by Markin.

16. One-half of the cabs in Pittsburgh are operated by Pittsburgh Transportation Co., and the other half are operated by Yellow Cab Co. of Pittsburgh. Both of these concerns are wholly owned subsidiaries of Parmelee and their purchase of motor vehicles for use as cabs is controlled by Markin.

17. Of the 214 cabs licensed in Minneapolis, 125 are operated by Yellow Taxi Co. of Minneapolis which is a wholly owned subsidiary of Parmelee. The purchase of motor vehicles for use as cabs by this concern is controlled by Markin.

V

Offenses Charged

18. Beginning about January 1929 and continuing thereafter up to and including the date of filing this complaint, the defendants have been and now are engaged in a combination and conspiracy to restrain and to monopolize interstate trade and commerce in the sale of motor vehicles for use as cabs to the principal cab operating companies in Chicago, Illinois, Pittsburgh, Pennsylvania, New
13 York, New York, and Minneapolis, Minnesota, and in the business of furnishing cab services for hire in the city of Chicago, Illinois, and its vicinity, in violation of Sections 1 and 2 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, as amended, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," said Act being commonly known as the "Sherman Act." Defendants threaten to continue such offenses and will continue them unless the relief hereinafter prayed for in this complaint is granted.

19. The aforesaid combination and conspiracy to restrain and to monopolize has consisted of a continuing agreement and concert of action among the defendants, the substantial terms of which have been that defendants agree:

(a) To control the operation, and the purchase, of motor vehicles for use as cabs, by the principal cab-operating companies in Chicago, New York, Pittsburgh, and Minneapolis;

(b) That each such operating company will purchase and use as cabs only motor vehicles manufactured by

CCM; and will not purchase for such use, or use, any motor vehicles made by other cab or automobile manufacturers;

(c) Yellow and Cab Sales will not attempt to compete with Parmelee for contracts with railroads or railroad terminal associations to transport passengers and their luggage between railroad stations in Chicago;

(d) Parmelee will not compete with Yellow or Cab Sales by seeking to engage, or engaging in the business of transporting passengers for hire in the city of Chicago and its vicinity except by contract with railroads and railroad terminal associations;

(e) To reduce the total number of taxicabs operated in the city of Chicago to 3,000, thereafter to induce the city of Chicago to enact an ordinance reducing the total number of taxicab licenses issued to 3,000, and to oppose and prevent any increase in the number of said taxicabs and licenses above 3,000;

(f) That Yellow and Checker will hold 2,595 of the 3,000 licenses issued by the city of Chicago, dividing them 1,595 to Yellow and 1,000 to Checker; that they would
14 secure and divide among themselves, in a ratio of 60 per cent to Yellow and 40 per cent to Checker, any licenses above 3,000 which might be subsequently issued by the city of Chicago;

(g) That Checker will lease all of its licenses to Cab Sales for $180 per year per license;

(h) Yellow and Cab Sales will not compete with each other by using a make or style of cab other than that manufactured by CCM or by providing more or better service to passengers; and

(i) That Checker and Yellow would prevent new operators, including veterans, from entering the cab business in Chicago and vicinity by annually renewing cab licenses for cabs they did not operate and had no intention of operating.

Said combination and conspiracy has been formed and effectuated by divers means and methods, including the acts, agreements, and understandings hereinafter set forth.

20. About January 1929, Markin, then president of CCM, Ernest H. Miller, president of Yellow Taxi Corp., New York, and J. A. Sisto & Co., investment bankers owning 20 per cent of the outstanding stock of CCM, commenced negotiations to merge the more important cab operating companies

in New York, Chicago, and other cities. One of the principal purposes of the proposed merger was to insure that these cab operating companies would thereafter purchase all of their motor vehicles for use as cabs from CCM and would not buy them from competitors of CCM. This plan of merger was thereafter carried out.

21. In furtherance of the plan, defendant Parmelee was organized April 12, 1929. It was financed in part by CCM, which purchased preferred stock and debentures for about $1,400,000. Ernest H. Miller became the first president and a director of Parmelee. Two of the other directors were also directors of CCM. In return for its stock and debentures, Parmelee promptly acquired 26 per cent (106,819 shares) of the outstanding stock of Chicago Yellow, 96 per cent (19,300 shares) of the outstanding stock of The Parmelee Company, 68 per cent (85,659 shares) of Yellow Taxi Corp., New York, and $2,052,417.50 in cash. During June 1929, Parmelee purchased an additional 8,350 shares of Chicago Yellow. During the same year, it purchased the remainder of the stock of The Parmelee Company and 22,341 shares of Yellow Taxi Corp., New York, to increase its holdings in the latter company to 86 per cent of the total stock.

22. The Parmelee Company was dissolved in May 1934 and its business of transporting passengers between railroad stations in Chicago was taken over by defendant Parmelee.

23. Parmelee has, since its first acquisition of stock in Chicago Yellow, continuously owned a sufficiently large number of shares of such stock to control the policies and operations of Chicago Yellow and has controlled them. Parmelee's control of Chicago Yellow has, in turn, been controlled by Markin.

24. The operation of cabs in New York City by the various cab-operating companies acquired by Parmelee from time to time following 1929, including Yellow Taxi Corp., New York, and Motor Cab Transportation Co., have now been consolidated in National Transportation Co., Inc., a wholly owned subsidiary of Parmelee. Motor Cab Transportation Co. was purchased by Parmelee from CCM in September 1930, and 422,787 shares of common stock of Parmelee was paid to CCM as part of the transaction. Since the acquisition of this stock, CCM has continuously owned more than 51 per cent of the capital stock of Parmelee.

25. Parmelee acquired 74 per cent of the capital stock of Yellow Cab Company of Pittsburgh in June 1929, and another 9.7 per cent before the end of 1929. Parmelee has continuously owned more than 51 per cent of said stock ever since. In October 1929, Parmelee acquired all of the outstanding stock of Pittsburgh Transportation Company and has continuously owned said stock ever since. In June 1930, Parmelee acquired Red Cab Company, a competing Pittsburgh cab-operating company, and merged its operations with its other two Pittsburgh subsidiaries, thereby acquiring a complete monopoly of the business of operating cabs in Pittsburgh.

26. Parmelee caused the formation of Yellow Taxi Company of Minneapolis, a Delaware corporation, in February 1931, to operate cabs in Minneapolis. Parmelee acquired all of its stock upon its formation, and owned it at least until December 31, 1933. The assets of the Delaware corporation were then transferred to a Minnesota corporation of the same name in return for the capital stock of the latter. The Delaware corporation was then dissolved. Parmelee has continuously owned all of the capital stock of the Minnesota corporation since the dissolution of the Delaware concern.

27. In October 1929, DeLuxe Motor Cab Company was the third largest concern operating cabs in Chicago, with about 400 city taxicab licenses, and a substantial interest in DeLuxe was owned by Markin. At that time, Markin offered to sell all stock in DeLuxe to Parmelee for $388,000, or $100,000 and 16,000 shares of Parmelee, Parmelee also to assume liability for $332,000 in mortgage notes held by CCM. DeLuxe owned approximately 308 cabs, valued at about $363,000. Parmelee considered that, although DeLuxe had been losing money, its net worth, aside from the value of its taxicab licenses, exceeded its liabilities by about $92,000 as of August 1929. Parmelee also considered that the value of the city taxicab licenses held by DeLuxe, because of the 1929 city ordinance tending to limit the number of taxicab licenses in Chicago, was at least $1,000 per license, or $400,000. In addition, Parmelee considered that the purchase of the DeLuxe stock would be of value since such purchase would effectively prevent other interests not then operating in Chicago from acquiring DeLuxe and Parmelee would "control the operation of two out of the three large operating companies" in Chicago. These three were Yellow, DeLuxe, and Checker. Parmelee accepted the proposal of Markin

and in February 1930 purchased, through General Transportation Company, a wholly owned subsidiary of Parmelee formed for this purpose, all outstanding stock of DeLuxe for $388,000, it being agreed that Markin and one Paul L'Amoreaux, who also owned a substantial interest in DeLuxe, would purchase 16,000 shares of Parmelee stock at $18 per share.

28. In 1930 Parmelee and M. M. Sokoll, president and director of Checker, caused the consolidation of DeLuxe and certain independent cab companies into a new company, Chicago Cab Company, one of the purposes of the consolidation being to prevent some outside company from entering the taxicab operating field in Chicago in competition with Yellow. In 1932, Cab Sales acquired a substantial interest in Chicago Cab Company. In July 1932, it caused the company to suspend operations and the drivers to enter into contracts with Checker. This action was approved by CCM as it would assist in preventing interests hostile to CCM from obtaining a competitive position in Chicago.

29. The Transportation Management Corp., a Delaware corporation, became a wholly owned subsidiary of Parmelee in April 1929, and in that month it entered into so-called management contracts with Yellow, The Parmelee Company, and Yellow Taxi Corp., New York. These contracts were substantially identical in their terms except for amounts of payments to be made by the cab operating companies. Each operating company agreed, among other things, that it would not make any purchase of more than $500 without consulting and obtaining the approval of the management company, and that all purchases, the advertising policy, and the employment and activities of departmental heads and superintendents would be supervised by the management company. Each contract provided that Ernest H. Miller, then president of both Parmelee and of the management company, would, as long as he was president of the management company, perform some of the said management. Miller became a director of Chicago Yellow and of Yellow in May 1929 and held these positions,
as well as the presidency of Parmelee and of the
18 management company, until 1932. Miller was, in
1929, and had been, a co-conspirator with Markin in formulating and carrying out the conspiracy charged in this complaint. For these so-called management services Yellow agreed to pay $50,000.00 annually to the Transportation Management Corp., The Parmelee Company agreed

to pay $25,000.00 and Yellow Taxi Corp., New York, agreed to pay $50,000.00.

30. About the same time The Transportation Management Corporation agreed to manage the cab-operating companies, it entered into contracts with Markin and Ernest H. Miller. It agreed to pay Markin $25,000.00 annually to act as its management advisor and agreed to pay Miller $50,000.00 annually to act as its general manager. The contract with Miller remained in effect until July 1932. The contract with Markin stated that Markin had no obligation to devote any specified or substantial portion of his time in rendering such services. Markin has continuously, since May 1929, been management advisor to The Transportation Management Corp. and, since May 1934, to its successor, Parmelee.

31. The Transportation Management Corp. was dissolved in May 1934 and its management functions and contracts were assumed by Parmelee. Parmelee continuously owned all of the capital stock of The Transportation Management Corp. from the time it first acquired it until the company was dissolved.

32. The terms of the management contracts described in paragraph 29 hereof have continued in effect substantially unchanged, through being incorporated in new contracts, except as to the sums paid thereunder, until the date of filing of this complaint. As Parmelee acquired additional subsidiaries following 1929, it caused them to enter into substantially identical management contracts.

33. Automotive Sales Corporation was incorporated in Delaware in April 1929. Three days later all of its stock was purchased by Parmelee for $1,000 and CCM
19 agreed to give it 5 per cent commission on all cabs sold by it for CCM prior to April 30, 1934. A few days after the contract was executed, Automotive Sales Corporation ordered 1,000 cabs from CCM for Yellow. Yellow paid $1,906.00 for each of these cabs, and Automotive Sales was paid the sum of $95.30 per cab by CCM as its commission. This sum was included in the price paid by Yellow for said cabs.

34. Cab Sales was incorporated in January 1930, and said company has been managed and operated since that time by defendant Markin, who has been the owner of all outstanding stock of Cab Sales since about 1934. In February 1930, CCM settled litigation between it and Checker. As part of the settlement, Checker agreed that its drivers

would purchase all motor vehicles for use as cabs from Cab Sales for a period of five years at a price of $2,350 per cab, this price to be adjusted in proportion to changes in the list price of cabs manufactured by CCM. At about the same time, CCM appointed Cab Sales as exclusive agent for sales to Checker and agreed to sell cabs to Cab Sales at $1,906 per cab, this price likewise to be adjusted in proportion to changes in the list price. Thereafter, during the ensuing five years, large numbers of cabs were purchased by Checker drivers from Cab Sales, which in turn purchased said cabs from CCM at prices about $400 lower than the prices paid by said drivers.

35. Cab Sales on May 1, 1931, borrowed the sum of $500,000 from Yellow to finance its acquisition of 51 per cent of the capital stock of Checker. Yellow loaned the money to Benzoline Motor Fuel Co., another wholly owned subsidiary of Chicago Yellow, which then reloaned it to Cab Sales. Cab Sales agreed to repay the loan in installments, the last payment to be made in 1941. Part of the consideration for said loan was the agreement by Cab Sales that it and Checker would purchase from Benzoline all gasoline and lubricating oils used in the operation of "Checker" Cabs.

36. In May 1932, Cab Sales defaulted on the first payment due on the said $500,000 loan and Benzoline extended the due dates of payments. In October 1932, Yellow loaned $180,000 to its substantially wholly owned subsidiary, The Waverly Corporation, a holding company, which, during the same month, loaned Cab Sales another $200,000, also to be repaid over a ten-year period. Waverly made the loan in order that Cab Sales might finance its acquisition of additional shares of Checker.

37. From November 1932 until September 1942, Cab Sales continuously owned more than 97 per cent of the capital stock of Checker. In September 1942, Markin caused Cab Sales to sell its holdings in Checker to its present owners in order to make them full associates in Markin's taxicab operations in Chicago.

38. Beginning in the year 1931, some drivers for Checker began to default on their payments for cabs purchased from Cab Sales. About the year 1932, Cab Sales began to foreclose on delinquent mortgage notes and to take over the ownership and operation of cabs. By 1936, Cab Sales actually owned and operated about 500 of the total number of taxicabs licensed to Checker. Thereafter, Cab Sales extended its ownership of cabs licensed to Checker and owned

all of them by June 1941. Since that time, it has owned and operated all cabs for which Checker has city taxicab licenses.

39. From the month of May 1931 to the present time, defendant Markin has actually controlled and directed the operation of all taxicabs for which Checker has held licenses from the City of Chicago.

40. In 1933 CCM prevented a divorcement of Yellow from Parmelee. In August of that year, Yellow and Parmelee agreed that Parmelee would sell all of its 48,730 shares of Chicago Yellow stock to Yellow for the purpose, among others, of quieting newspaper criticism of Parmelee as "a gigantic taxicab monopoly spreading over the whole country" and because divorcement of Chicago Yellow from Parmelee might convince the Chicago Board of Aldermen that previous criticism was unjustified and might induce them to raise taxicab rates which the Board had recently reduced. CCM, as owner of more than 51 per cent of the stock of Parmelee, objected to this transaction and Parmelee and Yellow agreed to rescind their agreement of sale.

In December of the same year, CCM loaned Parmelee
21 $197,500 with which to exercise an option to purchase from Yellow an additional 25,000 shares of stock in Chicago Yellow.

41. By the year 1937, the total number of cab licenses issued by the City of Chicago was 4,071, of which 2,166, or 53 per cent were issued to Yellow; 1,500, or 37 per cent, were issued to Checker; and 405, or 10 per cent, were issued to other cab operators.

42. About April 1937 Checker agreed with Yellow to reduce the number of cabs operated under its taxicab licenses. Yellow agreed to pay Checker one-half of the gross revenue lost by the latter by reason of fewer payments from drivers for its services. Pursuant to this agreement Checker reduced its cabs by about 336 during 1937 to a total of 1,164. During the same period Yellow reduced the number of its cabs by 155 to a total of 1,495.

43. In the summer of 1937, at the suggestion of Parmelee, Yellow and Checker agreed to induce the City of Chicago to reduce the total number of taxicab licenses to not more than 3,000, of which 1,500 would be issued to Yellow and 1,000 to Checker.

44. On January 3, 1938, following the enactment of the taxicab ordinance of December 22, 1937, referred to in paragraph 12 of this complaint, a contract was entered into between Yellow, Cab Sales, and Checker, which recited that

under the terms of the ordinance of 1934, and by filing acceptance thereof; defendant Yellow had secured to itself the right to hold, own, and operate 2,166 taxicab licenses; the defendant Checker had secured to itself the right to hold, own, and operate 1,500 of said licenses; that defendant Yellow was not operating and had not for more than ninety days operated 511 of the licenses owned by it and did not have equipment available for the purpose of exercising the rights and privileges conferred on it by reason of such licenses, and therefore Checker maintained that each of said 511 licenses was immediately subject
22 to forfeiture on complaint to the Mayor of the City of Chicago in accordance with the provisions of the ordinance of May 18, 1934; that the parties to said contract were desirous of securing a reduction in the number of taxicab licenses in the City of Chicago to not more than 3,000 but that Checker was unwilling to accept the provisions of said ordinance and to relinquish any of its licenses without compensation therefor; and that Yellow was desirous of accepting the provisions of said ordinance and in making possible a reduction in the number of outstanding licenses to 3,000. In view of these considerations, defendant Checker promised to relinquish for cancellation by the City of Chicago 500 taxicab licenses held by it; and to sell to Yellow the right of Checker, under said ordinance, to renew and obtain reissuance of 240 of the said 500 licenses to be surrendered by Checker. Defendant Yellow agreed to pay to Checker the sum of $550 per license for each taxicab license relinquished by Checker up to 500 licenses, for a total payment by Yellow to Checker of $320,000, which, at the option of Yellow, could be paid in the notes issued by Cab Sales in return for the $500,000 and $200,000 loans described in paragraphs 35 and 36 of this complaint. Said contract further provided that in the event that additional licenses above the number of 3,000 should be issued by the City of Chicago, over and above the number of licenses surrendered by Yellow and Checker, that Yellow would apply for and both parties would attempt to secure for it 60 per cent of all such additional licenses; and that Checker would apply for, and both parties would attempt to secure for Checker 40 per cent of such additional licenses, to the end that the total number of such additional licenses should be divided between Yellow and Checker on the basis of three-fifths to Yellow and two-fifths to Checker. Pursuant to said agreement, Checker surrendered 500 licenses for cancellation by the City of Chicago.

23 45. In addition to the above contract, Yellow agreed with Checker that it would surrender to the City of Chicago for cancellation a sufficient number of licenses to bring the total number of licenses down to the figure of 3,000, and Yellow did so surrender 571 licenses.

46. Beginning at some time prior to 1937, the precise time being unknown to plaintiff, and continuing to the date of filing this complaint, Cab Sales and Yellow have exchanged monthly statistics on their respective operations of cabs. Parmelee and CCM have, at various times during this period, acted as the intermediary for the exchange of these reports.

47. In 1938 the General Transportation Casualty Co., a New York corporation, was organized by Chicago Yellow, CCM and Cab Sales, for the purpose, among other things, of insuring taxicab companies against personal injury and property damage claims. In 1939 the company was reorganized and the name changed to the General Transportation Casualty and Surety Co. In 1944, the capital of the corporation was increased and Parmelee became an additional shareholder. This concern insures the cab operations of the defendants.

48. In 1938 Transportation Maintenance Corp., an Illinois corporation, was formed by Chicago Yellow, Parmelee, and Checker for the purpose of servicing all motor vehicles operated by each in the City of Chicago and vicinity. Prior thereto, each had serviced its own vehicles.

49. In the years 1936 and 1937 Yellow made application for and received 2,166 taxicab licenses, although it never operated more than 1,719 cabs at any time during said years, and for a short period it operated only 1,325. During the years 1938 to 1945, inclusive, Yellow applied for and received 1,595 taxicab licenses. The maximum number of cabs operated by it during each of said years is as
24 follows: 1,495 in 1938; 1,351 in 1939; 1,173 in 1940; 1,338 in 1941; 1,450 in 1942; 1,400 in 1943; 1,200 in 1944; and 1,100 in 1945. During the period from June 1944 to January 1946, defendant Yellow has placed on the streets a daily average of less than 1,100 taxicabs. During the period from 1942 to 1946, Yellow continually had in storage 145 taxicabs on which annual licenses were secured, but which cabs were never removed from storage. Yellow annually applied for and received 1,595 taxicab licenses from 1938 to 1945, knowing it would not utilize all of said licenses to operate cabs.

50. During each of the years 1939 to 1941, inclusive, Checker applied for and received 1,000 taxicab licenses. The maximum number of cabs operated under the licenses during these years is as follows: 927 in 1939; 920 in 1940; and 928 in 1941. During 1945 Checker and Cab Sales together did not have available for operation as many cabs as Checker had licenses; and Checker made application for the renewal of 1,000 licenses in 1945 knowing that neither it nor Cab Sales would utilize all of them to operate cabs.

51. On January 16, 1946, the Board of Aldermen of the City of Chicago passed a resolution authorizing the issuance of 250 licenses to veterans and, on January 23, 1946, the Public Vehicle License Commissioner of the City of Chicago issued notice to Yellow and Checker that he would cancel 234 licenses previously issued to Yellow and 87 previously issued to Checker, by reason of their failure to operate the number of taxicabs for which licenses had been issued.

52. Yellow thereupon instituted suit, in which Checker intervened as party plaintiff, to enjoin the City of Chicago and its officials from issuing said additional 250 licenses from cancelling existing licenses issued to said defendants, and in support of said suit made representations and filed affidavits with the Court that causes beyond the control of Yellow and Checker made it impossible for them to procure taxicabs to replace those which had become inoperable, or to procure new parts for replacement in and repair of their taxicabs. In fact, Yellow, Checker, and Cab Sales could have purchased and placed in operation enough additional motor vehicles to operate a cab for each license if they had been willing and free to purchase motor vehicles manufactured by others than CCM.

VI

Effects of the Conspiracy

53. The aforesaid combination and conspiracy has had, as was intended by the defendants herein, the following effects:

(1) Competition between Checker, Cab Sales, and Yellow has been eliminated;

(2) Competition between Checker, Cab Sales, and Yellow, on the one hand, and Parmelee, on the other hand, in the transportation of passengers and their luggage in the city of Chicago and vicinity has been eliminated and prevented;

(3) Since the year 1929, Yellow, Checker, Cab Sales, Parmelee, and Parmelee's cab operating subsidiaries in New York, Pittsburgh, and Minneapolis have been prevented and precluded from purchasing new motor vehicles for use as cabs from any manufacturer other than CCM, and other manufacturers of motor vehicles capable of use as cabs have been excluded from the opportunity of competing for said business;

(4) By reason of said conspiracy, Yellow, Checker, and Cab Sales, and Parmelee and its subsidiaries, have been required to pay more for motor vehicles purchased and operated by them as cabs then they would have had to pay in the absence of said conspiracy,
26 and other expenditures by said cab operating companies have been unnecessarily increased, which unnecessary expenditures have been reflected in, and have resulted in, high rates being charged the public for the transportation services rendered by said companies;

(5) By reason of said conspiracy, defendants have successfully excluded others, including veterans, from the opportunity to secure taxicab licenses from the city of Chicago and from the opportunity of participating in the operation of cabs in said city and its vicinity.

(6) By reason of said conspiracy, Yellow, Checker and Cab Sales have not operated their cabs to the extent reasonably necessary to meet the public demand for cab service.

Prayer

Wherefore, Plaintiff Prays:

A. That, pursuant to Section 5 of the Sherman Act, an order be made and entered herein requiring each of the defendants as are not within this District to be brought before the Court in this proceeding as parties defendant, and directing the Marshals of the Districts in which they severally reside to serve summons upon them.

B. That the aforesaid combination and conspiracy in restraint of trade and conspiracy to monopolize be adjudged and decreed to be unlawful.

C. That defendants be required to release and waive any and all rights they may have or claim to have under the ordinance of the City of Chicago of December 22, 1937, and its extension, to secure additional taxicab licenses in excess of the number now held by Yellow and Checker.

D. That the agreement of January 5, 1938, between Yellow, Cab Sales, and Checker be declared to be illegal and of no force and effect, and that each party thereto be enjoined from enforcing, from attempting to enforce, and from observing any of the provisions thereof, and from entering into any similar agreement or understanding.

E. That the agreement between Parmelee and Markin, by which Markin is employed as advisor to Parmelee,
27 shall be declared to be illegal and of no force and effect, and that Parmelee and Markin be enjoined from enforcing or attempting to enforce, and from observing any of the provisions thereof, and from entering into any similar agreement or understanding.

F. That all so-called management contracts entered into between Yellow, Chicago Yellow, and Parmelee or any of its subsidiaries, be declared to be illegal and of no force and effect, and that each defendant be enjoined from enforcing or attempting to enforce them, from observing any of the provisions thereof, and from entering into any similar agreement or understanding

G. That Markin be required to divest himself of all stock or other interest in, or control over, Yellow, Chicago Yellow, Parmelee and all subsidiaries or affiliates of Parmelee, and be enjoined from hereafter acquiring any interest in, or ownership of stock of, or any control over any defendant or its subsidiaries other than CCM, Cab Sales, and Checker.

H. That the corporate defendants be required to divest themselves of all interest in, and ownership of stock of, each other, and of control of each other, to the end that each of the following groups of defendants shall be independent of, and free to compete with, each other:

1. CCM, Cab Sales, and Checker;
2. Parmelee, Yellow Taxi Co. of Minneapolis, Yellow Cab Co. of Pittsburgh, Pittsburgh Transportation Co., and National Transportation Co., Inc.;
3. Yellow and Chicago Yellow.

I. That each corporate defendant be enjoined from hereafter acquiring any interest in, or ownership of stock of, or any control over, any defendant or its subsidiaries other than one in its own group as stated in the preceding paragraph.

28 J. That either Chicago Yellow or Cab Sales be required to divest itself of all of its interest in and ownership of the stock of Transportation Maintenance Corporation, so that there shall be no community of interest in,

or control over, said Transportation Maintenance Corporation by Chicago Yellow and Cab Sales.

K. That the plaintiff have such further, general, and different relief as the nature of the case may require and the Court may deem proper in the premises.

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30 In the District Court of the United States
(Title Omitted)

Motion of Defendants, Yellow Cab Company; Chicago Yellow Cab Company, Inc.; Parmelee Transportation Company; Cab Sales and Parts Corporation; Checker Taxi Company; Checker Cab Manufacturing Corporation, and Morris Markin, to Dismiss the Complaint for Failure to State a Claim—Filed Sept. 16, 1946

The above-named defendants, moving on one set of motion papers for the convenience of the Court and reserving the right of each moving defendant to be heard through its own counsel on these motions, hereby do separately and severally move the court pursuant to Rule 12(b) of the Federal

Rules of Civil Procedure for judgment dismissing the complaint for failure to state a claim against the defendants upon which relief can be granted by this Court. In the alternative, they do further move for partial judgment pursuant to Rule 12(b) of the Federal Rules of Civil Procedure, dismissing from the complaint for failure to state a claim against the defendants upon which relief can be granted by this court, the following portions of said complaint:

1. All of paragraphs 4, 5, 6, 19 (except subparagraphs (a) and (b)), 20-52, 53 (except subparagraph (3)), and the Prayer (except Paragraph A.).

31 2. The words "and in the business of furnishing cab services for hire in the City of Chicago, Illinois, and its vicinity" in paragraph 18.

3. The words "the operation and" in paragraph 19(a), and the words "and use as cabs" and the words "for such use, or use" in paragraph 19(a).

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Received a copy of the foregoing motion and brief and appendices of defendants in support thereof this 16th day of September, 1946.

MELVILLE C. WILLIAMS
Attorney for Plaintiff

33 In the District Court of the United States
for the Northern District of Illinois
Eastern Division

Civil Action

No. 46 C 1339

UNITED STATES OF AMERICA, PLAINTIFF,
VS.
YELLOW CAB COMPANY, *et al.*, DEFENDANTS.

Memorandum—Filed Nov. 16, 1946

This is an action by the government under Section 4 of the Sherman Act (15 U.S.C.A. Sec. 4) seeking relief against an alleged conspiracy and combination to restrain and to monopolize trade in violation of sections 1 and 2 of that Act. Defendants have filed motions to dimiss the complaint under Rule 12(b) of the Federal Rules of Civil Procedure for failure to state a claim upon which relief can be granted.

The action is brought against six corporations and one individual. Checker Cab Manufacturing Corporation manufactures motor vehicles in Michigan for use as cabs. Its president is Morris Markin, a resident of Michigan. The Manufacturing Corporation and Markin will both be referred to hereinafter as "CCM". Chicago Yellow Cab Company, Inc., owns all of the capital stock of Yellow Cab Company, which operates "Yellow" taxicabs in Chicago. Checker Taxi Company holds taxicab licenses issued by the City of Chicago and leases such licenses to Cab Sales and Parts Corporation which operates "Checker" taxicabs in Chicago. Yellow Cab Company, Checker Taxi Company and Cab Sales and Parts will hereinafter be referred to as " the taxicab operating companies." Parmelee Transportation Company operates vehicles in Chicago to transport passengers and their luggage from one railroad station to another pursuant to contracts with railroads and railroad terminal associations.

34 The complaint contains many allegations designed to show that CCM under contracts, understandings and stock acquisitions has such control of the taxicab operating companies and Parmalee that the latter are required to purchase their vehicles from CCM. No end is served by here summarizing these allegations. The court assumes for the purpose of the motion before us that CCM so controls the taxicab operating companies and Parmelee.

Although containing only one count the complaint actually charges two conspiracies. It charges, first, that the de-

fendants have conspired to restrain commerce in the transportation by taxicabs of railroad passengers between, to and from railroad stations located in the City of Chicago. It charges, second, a conspiracy to restrain interstate trade in the sale of motor vehicles for use as cabs.

The scope of the first of these charges is all-important. The legality or illegality of any restrains alleged in the complaint must be tested solely by their effect on the transportation by taxicabs of railroad passengers coming to or leaving Chicago. The government does not claim that any such restraints affect the business of railroads or the transportation of railroad passengers except to the extent stated. The basic question on this charge is, therefore, whether the operating companies, to the extent that they transport by taxicabs interstate railroad passengers between, to and from railroad stations, are engaged in interstate commerce.

This is not the first time this issue has been presented to a court for determination. The United States Supreme Court in *New York ex rel Pennsylvania RR Co. v. Knight*, (1904) 192 U. S. 21, held that identical taxicab services were not interstate commerce but an independent local service preliminary or subsequent to interstate transportation. The Supreme Court has frequently referred to that decision and in each instance has treated it as correct. *Swift and Company v. United States*, (1905) 196 U. S. 375, 401; *Stafford v. Wallace*, (1922) 258 U. S. 495, 528. And, this court is of the opinion that the decision in the *Knight* case is predicated on sound legal principles.

35 The *Knight* case is not disposed of by the fact, as urged by the government, that the court might have based its decision on other grounds. Nor do the many decisions under acts such as the National Labor Relations Act and the Fair Labor Standards Act, relied on by the gorevnment, weaken its force. These acts extended federal control over a wide area of intrastate activity which affects interstate commerce. Here, however, the qeustion is whether defendants' taxicab operations are interstate commerce. But even under these acts the one case involving taxicab operations held them to be intrastate. *Ridley v. General Cab Company*, CCH 6 Labor Cases, 61, 374. Also, in the *Knight* case the court made the following statement:

> "As we have seen, the cab service is rendered wholly within the State and has no contractual or necessary relation to interstate transportation. It is either pre-

liminary or subsequent thereto. It is independently contracted for, and not necessarily connected therewith."

To prove interstate character, the government points to the fact that defendants' taxicabs render services to interstate railroad passengers. The mere rendering of local services to an interstate passenger cannot transform an intrastate business into an interstate enterprise. To so hold would obviously result in obliterating the historical and sound distinction between the two types of commerce. The government urges as an important element the fact that railroad stations in Chicago are designed to facilitate the use of taxicabs for the convenience of the interstate railroad passengers. But many railroad stations are also designed to afford easy access to other local services for the convenience of passengers. Thus, in Chicago at least two of the largest stations are specially designed to provide its passengers with easy means of access to the elevated lines. A number of railroad depots also provide accommodations for private automobiles. Stations in other cities are specially designed to furnish railroad passengers with access to large hotels. Can it be logically urged that because of these arrangements for the convenience of the passengers, the elevated lines or such hotels are engaged in interstate commerce. As was stated in the *Knight* case:

36 "* * * many things have more or less close relation to interstate commerce, which are not properly to be regarded as a part of it. If the cab which carries the passengers from the hotel to the ferry landing is engaged in interstate transportation, why is not the porter who carries the traveler's trunk from his room to the carriage so engaged? If the cab service is interstate transportation, are the drivers of the cabs and the dealers who supply the hay and grain for horses also engaged in interstate commerce? And where will the limit be placed?"

The following facts either appear in the complaint, are of common knowledge, or have been admitted in briefs and arguments. A railroad passenger upon his arrival in Chicago may freely choose one of several methods of local transportation whether he be going to another station or to any other point in the city. Such passenger, prior to his arrival, makes no arrangement with any railroad or with anyone else for the hire of a taxicab in Chicago. If, upon

arrival, he determines to take a taxicab he makes arrangements for carriage with the taxicab driver and is transported to another point in Chicago or its vicinity. The defendants' taxicabs do not cross state lines. The railroad passenger has control of the taxicab both as to contents, direction and time of use. He pays his taxicab fare to the taxicab driver at a rate fixed by the City of Chicago and the railroads have no control or interest in that fare. The carriage of a railroad passenger by any particular taxicab is casual and incidental and the number of taxicab trips in which interstate railroad passengers are transported is a small part of the total number of taxicab trips in Chicago. Finally, no corporate contractual or other relationship in the nature of integration exists between the railroads and the taxicab companies.

No one of the foregoing elements, of course, is determinative. But as the Supreme Court has held, the determination of whether particular commerce is interstate or intrastate is a "practical" matter "drawn from the course of business". *Swift and Company v. United States, supra.* Considering the entire course of business of the taxicab companies, the court concluded that such business, as held in the *Knight* case, is an independent local service preliminary or subsequent to any interstate transportation. In
37 the court's judgment, therefore, the complaint fails to state a claim under the Sherman Act insofar as the transportation of interstate railroad passengers is concerned.

In addition the court is of the opinion that the complaint fails to set forth such facts as are necessary to show that the defendants conspired to or did restrain trade. The existence and legality of that restraint must be determined with respect to the transportation by taxicabs of interstate railroad passengers between, to and from railroad stations in Chicago. The complaint contains no allegations showing a conspiracy directed to, or in restraint of, that commerce. There is no allegation that defendants agreed upon the rates to be charged for the transportation of interstate railroad passengers. There is no allegation that insufficient taxicabs are furnished for the transportation of such railroad passengers. There is no allegation that defendants have otherwise restrained such commerce. The complaint instead proceeds on the theory that defendants conspired to restrain generally the business of furnishing cab services for hire in the City of Chicago and leaves to assumption and

inference the effect upon one small segment of that general business—the transportation of interstate railroad passengers. Such vital elements in the statement of a claim cannot be left to inference and speculation.

The complaint also alleges defendants have conspired to restrain and monopolize interstate trade in the sale of motor vehicles for use as cabs. The complaint proceeds on the theory that CCM has a monopoly of the sale of taxicabs in Chicago alone because the taxicab operating companies held about 80% of the taxicab licenses issued by the City. The complaint does mention three other cities, New York, Minneapolis and Pittsburgh. There patently exists no monopoly in the first two cities in which CCM subsidiaries operate 2,000 of the 13,000 and 125 of the 214 taxicabs respectively. The allegations with respect to conditions in Pittsburgh are too vague to determine the situation in that city. But the complaint does not charge that CCM has a monopoly in the manufacture of taxicabs or a monopoly in the general sense of the sale of taxicabs. It is a mat-
38 ter of common knowledge that the large automobile manufacturers produce and sell the great majority of vehicles used as taxicabs.

The State of Illinois has by statute delegated to the City of Chicago (Cities and Villages Act, Smith-Hurd Ill. Ann. Stats., Ch. 24, Secs. 23-28, 10, 27, 51, 78) power to regulate the taxicab industry in Chicago. The City of Chicago has in turn enacted a series of ordinances governing the licensing and operation of taxicabs in Chicago. (Ordinances of September 25, 1929; May 18, 1934; December 22, 1937; June 26, 1945.)

The court is of the opinion that the charge does not state a claim under these facts. Such restraint as exists in this case necessarily results from the acquisition by CCM of the control of two outlets for purchase of CCM's product. The nature of the restraint is that the outlets are thereby prevented from buying vehicles from manufacturers other than CCM or conversely that manufacturers other than CCM are prevented from selling vehicles to the outlets. Restraints of this nature are not frowned upon by the law. They are common and are inherent in the acquisition by a manufacturing company of outlets regardless of whether the manufacturer creates the outlets or acquires them by purchase or under exclusive agency arrangement. Exclusive dealing arrangements of this nature are normal, usual and customary business practices and their legality

under the Sherman Act has long been recognized. *United States v. Winslow*, (1913) 227 U. S. 202; *United States v. United States Steel Corp.*, (1920) 251 U. S. 417; *Black and White Taxicab and Transfer Company v. Brown and Yellow Taxicab and Transfer Company*, (1928) 276 U. S. 518; *United States v. Paramount Pictures*, (1946) 66 F. Supp. 323.

The effect of the restraint on interstate commerce is plainly inconsequential. It consists solely of sales of one product by one comparatively small manufacturer to two companies which have about 80% of one type of business in one city in the United States. It consists of sales of 2,500 taxicabs out of many thousands sold in interstate commerce. Such effect is clearly too unsubstantial
39 to meet the test laid down for violation of the Sherman Act. *Apex Hosiery Co. v. Leader*, (1939) 310 U. S. 469; *United Mine Workers of America v. Coronado Coal Company*, (1922) 259 U. S. 344; *Glenn Coal Company v. Dickinson Fuel Company*, (C.C.A. 4, 1934) 72 F. (2d) 885.

The court, therefore, finds nothing illicit in the nature of the restraint resulting from CCM's acquisition of control of the taxicab operating companies.

The charge must fail, however, for a more decisive reason. If illegality attaches to CCM's acquisition of the taxicab operating companies such illegality must lie in the fact that the operating companies hold 80% of the licenses issued by the city. It is apparent from the relief prayed in the complaint that this suit would not have been filed had CCM controlled only one operating company or had both operating companies held less than a majority of the licenses issued by the city. It is obviously indispensable to the theory of the complaint that the taxicab operating companies hold the great preponderance of licenses issued by the city. The government's theory therefore resolves itself into an attack on the validity of the city's taxicab ordinances or on the validity of the city's issuance of licenses to the taxicab operating companies.

The Sherman Act contains no authority for such an attack on the city's power or exercise of such power. The courts have uniformly held that the licensing and regulation of the taxicab industry is a subject for exercise solely by a municipality under its police power. This court and the courts of Illinois have held Chicago's taxicab ordinances a valid exercise by the city of its police power and they have held that the issuance by the city of a majority of the taxicab licenses to the defendant operating companies

his case does not create a monopoly. *Capitol Taxicab v. Cermak* (C.C.A. 7, 1932) 60 F.(2d) 608; *People v. mpson*, (1930) 341 Ill. 166; *Chicago v. Dorband*, (1938) Ill. App. 617; *Chicago v. Eagle Taxi Co.*, (1933) 273 App. 614; *Yellow Cab Company v. City of Chicago*, uit Court of Cook County, No. 46 C 943, unreported, 1946. In *Rudack v. Valentine*, (Spec. Term, N. Y. County, (1937) 183 Misc. 326, 295 N. Y. S. 976, aff'd (1937) 274 N. Y. 615, 10 N. Y. (2d) 577, the court that the licensing and regulation of the taxicab inry is a valid exercise of a municipality's police power. court pointed out that in substantially all cities the cab industry is treated as a public utility under local lations.

is not for the court to determine whether the city has d wisely or unwisely in issuing the majority of its ses to one interest or to two corporations owned or conled by the same interest. It is a question rather for determination of the city in the public interest of its ens. The Sherman Act, as the Supreme Court has , does not include within its reach such restraints as essarily flow from the regulation of local problems by l governmental bodies. *Parker v. Brown*, (1943) 317 . 341; *Field v. Barber Asphalt Paving Company*, (1904) U. S. 618.

With respect to Parmelee, the complaint makes two ms. First, it is alleged that Parmelee will not compete the taxicab operating companies for the latter's busi. This claim must refer to the taxicab companies' busi other than the transportation of interstate railroad sengers. Since this remaining business is concededly astate business no basis exists for holding this claim in the reach of the Sherman Act. Second, it is alleged the taxicab operating companies will not attempt to pete with Parmelee for contracts with railroads or rail terminal associations for the transportation of rail passengers and their luggage. Having in mind a comly known fact that the taxicab business is totally dif ent from Parmelee's both from a standpoint of equip t used and services rendered, the court is of the opin the allegations referred to are insufficient to charge onspiracy to restrain trade in this respect. Further, court is unfamiliar with any principle of law that res a corporation in an integrated enterprise to compete h an affiliated corporation.

For the reasons indicated defendants' motion to dismiss should be sustained.

WALTER J. LA BUY

Walter J. La Buy, *Judge*
United States District Court

42 In the District Court of the United States

(Title Omitted)

Amendment to Complaint—Filed Aug. 29, 1947

The United States of America, by its attorneys, hereby amends the complaint as follows:

1. Add the following to paragraph 3 (g):
Markin has authorized, ordered, or done the acts of Cab Sales and CCM constituting the offenses hereafter charged in this complaint.
2. Strike the words "Yellow, Cab Sales," and ",and others," from the last sentence of paragraph 4.
3. Amend paragraph 5 to read as follows:
.5. Parmelee transports such interstate railroad passengers and their luggage between stations in Chicago, when the destination of the passengers is more than 85 miles distant from Chicago, pursuant to contracts with interstate railroads by which the receiving railroads have agreed to pay Parmelee 85¢ for each full fare passenger so 44
transported. These passengers receive a Parmelee ticket as part of their railroad ticket. Parmelee also transports some interstate railroad passengers and their luggage (about one per cent of the number carried under said contracts) upon payment by the passenger of a cash fare of 60¢.

43 4. Strike paragraph 6.

5. Renumber the first two sentences of paragraph 7 as paragraph 6; and renumber the remainder of the paragraph as paragraph 7.

6. Amend paragraph 13 by adding thereto the following:
This judgment of the Circuit Court was affirmed on appeal by the Supreme Court of Illinois.

7. Amend paragraph 14 to read as follows:
14. When the investigation leading to the original complaint in this case was begun in February 1946, and at the time of the filing of the original complaint, about 3,000 regular, annually

renewable, and assignable cab licenses were outstanding in the city of Chicago, of which 1,595 were issued to defendant Yellow, 1,000 to defendant Checker, which leased them to Cab Sales, and 405 were issued to others. During the investigation, and following March 18, 1946, 275 temporary, one-year, non-transferable licenses, terminating on December 31, 1946, were issued with the consent of Yellow and Checker, to so-called "independents." These temporary licenses were renewed for one calendar year in January 1947. In addition, there are approximately 1,200 unlicensed taxicabs operating in Chicago at the time of filing this amendment to the complaint, whose owners or operators are unable to obtain either regular or temporary taxicab licenses. Parmelee operates 85 non-licensed cabs in transferring passengers between railroad stations in Chicago.

8. Strike the last sentence of paragraph 15.

9. Insert the number "250" between the words "the" and "cabs" in the first line of paragraph 16 and strike the phrase "and their purchase of motor vehicles for use as cabs is controlled by Markin" from the last sentence of the paragraph, placing a period following the word "Parmelee" in said last sentence.

10. Strike the last sentence of paragraph 17.

11. Amend paragraph 18 to read as follows:

18. Beginning about January 1929 and continuing thereafter up to and including the date of filing this amended complaint, the defendants have been and now are engaged in a combination and conspiracy to restrain and to monopolize interstate trade and commerce in the sale of motor vehicles for use as cabs to the principal cab operating companies in Chicago, Illinois, Pittsburgh, Pennsylvania, New York, New York, and Minneapolis, Minnesota, and in the transportation as a part of an interstate journey of railroad passengers and their luggage between railroad stations in the city of Chicago, Illinois, pursuant to contracts with railroads and railroad terminal associations, in violation of Sections 1 and 2 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, as amended, entitled "An

Act to protect trade and commerce against unlawful restraints and monopolies," said Act being commonly known as the "Sherman Act." Defendants threaten to continue such offenses and will continue them unless the relief hereinafter prayed for in this complaint is granted.

12. Strike the phrase "the operation, and" from the first line of paragraph 19 (a) and remove the comma following the word "purchase" in said line.

13. Strike paragraph 19 (d) and renumber subsequent subparagraphs accordingly.

14. Insert a semicolon following "CCM" in old paragraph 19 (h) and strike all words thereafter in that paragraph.

15. Amend old paragraph 19 (i) to read as follows:

19 (h). That Checker and Yellow would prevent new operators, including veterans, from entering the cab business in Chicago and from buying taxicabs and replacements from concerns other than CCM, by annually renewing cab licenses for cabs they did not operate and had no intention of operating; and

16. Insert the following as paragraph 19 (i):

19 (i). To acquire or gain control of the principal companies operating licensed cabs in Chicago which competed, or might compete, with Parmelee for contracts with railroads or railroad terminal associations for the transportation of interstate railroad passengers and their luggage between railroad stations.

17. Insert the words "the only other" in lieu of the word "a" in the fourth line from the end of paragraph 25.

18. Insert the words "City Council" in lieu of the words "Board of Aldermen" in the second sentence of paragraph 40 and in the first line of paragraph 51.

19. Amend paragraph 53 (1) to read as follows:

53 (1) Defendants have monopolized the business of operating cabs in the city of Chicago and have successfully excluded others, including veterans, from engaging in said business and from purchasing cabs and replacements thereof from concerns other than CCM;

20. Amend paragraphs 53 (2) to read as follows:

53 (2) Competition has been eliminated between Yellow, Checker, Cab Sales, and Parmelee

for contracts with railroads and railroad terminal associations for the transportation of interstate passengers and their luggage between stations in Chicago; and the monopoly of Parmelee over said business has been promoted, protected, and assured;

21. Strike paragraphs 53 (5) and 53 (6).

22. Insert a period following the word "CCM" in the last line of paragraph G of the prayer and strike the words "Cab Sales, and Checker." at the end of said paragraph.

46 23. Strike subparagraphs H 1, 2, and 3 of the prayer and in lieu thereof insert the following:

1. CCM;
2. Cab Sales and Checker;
3. Parmelee, Yellow Taxi Co. of Minneapolis, Yellow Cab Co. of Pittsburgh, Pittsburgh Transportation Co., and National Transportation Co., Inc.;
4. Yellow and Chicago Yellow

so that the text of the complaint as amended reads as follows:

47 In the District Court of the United States
for the Northern District of Illinois
Eastern Division

Civil Action No. 46 C 1339

Equitable Relief Sought

UNITED STATES OF AMERICA, PLAINTIFF,

v.

YELLOW CAB COMPANY; CHICAGO YELLOW CAB COMPANY, INC., PARMELEE TRANSPORTATION COMPANY; CAB SALES AND PARTS CORPORATION; CHECKER TAXI COMPANY; CHECKER CAB MANUFACTURING CORPORATION; AND MORRIS MARKIN, DEFENDANTS.

Amended Complaint

The United States of America, by its attorneys, acting under the direction of the Attorney General, brings this complaint against the defendants named herein, and upon information and belief alleges as follows:

I

JURISDICTION AND VENUE

1. This complaint is filed and these proceedings are instituted under Section 4 of the Act of Congress of July 2,

1890, c. 647, 26 Stat. 209, as amended, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," said Act being commonly known as the "Sherman Act," against the defendants named herein in order to prevent and restrain violations by them of Sections 1 and 2 of said Act.

2. The defendants Yellow Cab Company, Chicago Yellow Cab Company, Inc., Parmelee Transportation Company, Cab Sales and Parts Corporation, and Checker Taxi Company transact business within the Eastern Division of the Northern District of Illinois, and are found therein.

48

II

Description of the Defendants

3. The following corporations and persons are hereby named defendants herein:

(a) Yellow Cab Company, a Maine corporation, with principal offices at 57 East 21st Street, Chicago, Illinois. This defendant is hereinafter referred to as "Yellow." It operates the "Yellow" cabs in Chicago, Illinois, and vicinity.

(b) Chicago Yellow Cab Company, Inc., a New York corporation, with principal offices at 57 East 21st Street, Chicago, Illinois. This defendant is hereinafter referred to as "Chicago Yellow." It is a holding company owning all of the capital stock of Yellow as well as all of the capital stocks of Benzoline Motor Fuel Co., an Illinois corporation, and Utilities Motor Fuel Co., Inc., an Indiana corporation. These two concerns sell gasoline and oil in Chicago and vicinity, primarily to cab operating companies. Chicago Yellow also owns 49 per cent of the capital stock of Transportation Maintenance Corporation, an Illinois corporation, which services and repairs cabs in Chicago, as well as 45 per cent of the capital stock of General Transportation Casualty and Surety Co., a New York corporation, which insures cab operating companies; and 7.8 per cent of the capital stock of defendant Checker Cab Manufacturing Corporation.

49 (c) Parmelee Transportation Company, a Delaware corporation, with principal offices at 300 North Desplaines Street, Chicago, Illinois. This defendant is hereinafter referred to as "Parmelee." It operates cabs in Chicago to transport passengers

and their luggage from one railroad station to another, pursuant to contracts with railroads and railroad terminal associations. Parmelee owns 29.5 per cent of the outstanding capital stock of Chicago Yellow, and 10 per cent of the capital stock of General Transportation Casualty and Surety Co. It also owns all of the capital stock of each of the following corporations:

(1) National Transportation Co., Inc., a New York corporation, which operates cabs in New York, New York;

(2) Parmelee System, Inc., a New York corporation, which, among other things, manages the operations of National Transportation Co., Inc.;

(3) Yellow Cab Company of Pittsburgh, a Pennsylvania corporation, which operates cabs in Pittsburgh, Pennsylvania;

(4) Pittsburgh Transportation Company, a Pennsylvania corporation, which also operates cabs in Pittsburgh; and

(5) Yellow Taxi Company of Minneapolis, a Minnesota corporation, which operates cabs in Minneapolis, Minnesota.

(d) Checker Cab Manufacturing Corporation, a New Jersey corporation, with principal offices at Kalamazoo, Michigan. This defendant is hereinafter referred to as "CCM." It manufactures and sells cabs. CCM owns 61.75 percent of the outstanding capital stock of Parmelee and 30 per cent of the capital stock of General Transportation Casualty and Surety Company.

(e) Cab Sales and Parts Corporation, an Illinois corporation, with principal offices at 1401 West Jackson Boulevard, Chicago, Illinois. It operates the "Checker" cabs in Chicago and vicinity. A predecessor corporation of the same name was incorporated in Delaware in 1930. In 1938, the assets of the predecessor were transferred to the defendant corporation and the predecessor was dissolved. Both concerns are hereinafter referred to as "Cab Sales." Cab Sales owns 1.59 per cent of the outstanding capital stock of Chicago Yellow, 15 per cent of the capital stock of General Transportation Casualty and Surety Co.; and 51 per cent of Trans-

portation Maintenance Corporation. It also owns 35.7 per cent of the outstanding capital stock of CCM.

(f) Checker Taxi Company, a Delaware corporation, with principal offices at 1401 West Jackson Boulevard, Chicago, Illinois. It operated "Checker" cabs in Chicago and vicinity from December 1931 until about 1941. Its predecessor of the same name, an Illinois corporation, operated "Checker" cabs in Chicago and vicinity from about 1919 until its operations were transferred to the defendant. Both concerns are hereinafter referred to as "Checker." At the present time, Checker has no employees and no property other than an interest in 1000 taxicab licenses issued to it annually by the city of Chicago, which licenses are leased by it to
51 Cab Sales for $180 per year per license. Four hundred fifty shares of the capital stock of Checker are owned by 18 former cab drivers, who possess 25 shares each, and the remaining 60,550 shares are owned by a partnership composed of Michael M. Sokoll, George McDonald, Julius Jessmer, R. E. Oakland, J. E. King, and M. H. Freimark, each of whom are officers, directors, or former officers or directors of either Cab Sales or CCM.

(g) Morris Markin, president of CCM, and a resident of Kalamazoo, Michigan. Markin owns all of the capital stock of Cab Sales, 12.2 percent of the outstanding capital stock of CCM, and .13 per cent of the outstanding capital stock of Chicago Yellow. Markin has authorized, ordered, or done the acts of Cab Sales and CCM constituting the offenses hereafter charged in this complaint.

III

Nature of the Trade and Commerce Involved

4. The city of Chicago, Illinois, is the terminus of a large number of railroads engaged in the transportation of passengers among a majority of the States of the United States. A few passengers are transported through Chicago by rail, but it is necessary for the great majority of them, including those traveling from one State to another, to get off the trains by which they traveled to Chicago, to go to another station from two city blocks to two miles distant, and to board other trains operated by other railroads. A sub-

al number of said passengers in interstate commerce
abs operated by Parmelee in transporting themselves
heir luggage from one station to another as afore-
said.

5. Parmelee transports such interstate railroad
passengers and their luggage between stations in
go, when the destination of the passengers is more
85 miles distant from Chicago, pursuant to contracts
interstate railroads by which the receiving railroads
agreed to pay Parmelee 85¢ for each full fare passen-
o transported. These passengers receive a Parmelee
as part of their railroad ticket. Parmelee also trans-
some interstate railroad passengers and their luggage
t one per cent of the number carried under said con-
) upon payment by the passenger of a cash fare of

CCM manufactures motor vehicles for use as cabs at
ctory in Kalamazoo, Michigan, and ships them to Par-
, Yellow, and Cab Sales in Chicago, Illinois. CCM also
them to subsidiaries of Parmelee in New York City,
ourgh, and Minneapolis.

All motor vehicles purchased by Cab Sales for use as
and all purchased by Chicago Yellow and the cab-
ting subsidiaries of Parmelee, between the time Par-
acquired part of their stock and the beginning of the
tigation leading to this complaint, have been manu-
red by CCM and sold and shipped in interstate com-
from Kalamazoo, Michigan.

IV

Background of the Conspiracy

In the month of January 1929, when the conspiracy
ed herein began:

(a) Yellow, as now, was engaged in operating "Yellow" cabs in Chicago. It held 2,350, or 44 per cent of the 5,289 taxicab licenses issued by the city of Chicago; and it had never purchased cabs from CCM.

(b) Chicago Yellow, as now, owned all of the capital stock of Yellow. It did not own any stock of CCM.

(c) Parmelee had not been incorporated. The present cab-operating subsidiaries of Parmelee, and their predecessors, were independent concerns. The business of transporting passengers between railroad stations in Chicago pursuant to contracts

with railroads and railroad terminal associations was conducted by The Parmelee Company, a corporation which was dissolved in May 1934. Neither The Parmelee Company nor any of the present cab-operating subsidiaries of Parmelee, nor their predecessors, owned any stock of Chicago Yellow.

(d) Checker was a so-called "cooperative" cab operating company in Chicago. It held 1,750 city taxicab licenses, or 33 per cent of the 5,289 issued. Its stockholders consisted of a large number of owners of "Checker" cabs. Each stockholder contracted with Checker to pay a fee or commission for services rendered by Checker in repairing and maintaining his cabs, providing gasoline, oil, tires, and parts, insurance, licensing, and legal and other services. Each cab owner also agreed that the record title of his cabs should rest in Checker, that Checker would take out city licenses for said cabs in its own name, and would permit said stockholders to use said city licenses in the operation of their cabs.

(e) CCM did not own any stock in Chicago Yellow, Checker, or The Parmelee Company.

(f) Markin was president and general manager of CCM.

54 9. The city of Chicago issued 5,289 taxicab licenses in 1929, of which, in addition to the 2,350 issued to Yellow and 1,750 to Checker, 400, or 8 percent, were issued to DeLuxe Motor Cab Company, a substantial part of which was owned by Markin, and the remaining 789, or 15 per cent, were issued to others.

10. Prior to 1929, the ordinances of the city of Chicago did not restrict or limit the number of taxicab licenses which might be issued. In September of that year, the city of Chicago enacted an ordinance providing that no taxicab licenses should thereafter be issued unless the Public Vehicle License Commission should, after hearing, by resolution, declare that public convenience and necessity required the issuance of such licenses, provided that such declaration of public convenience and necessity should not be necessary for the licensing of the same number of taxicabs licensed for operation and operated by the applicant under the same name and colors on September 15, 1929, or the renewal annually thereafter of the same number of licenses.

11. In May 1934, the city of Chicago enacted an ordinance providing that no license should thereafter be issued ex-

cept upon transfer to permit replacement of a taxicab, or, in the annual renewal of outstanding licenses, unless the Public Vehicle License Commission, after a hearing, by resolution, should declare that public convenience and necessity required additional taxicab service.

12. On December 22, 1937, the city of Chicago enacted an ordinance providing that in the event that a sufficient number of taxicab licenses should be surrendered by licensees to reduce the number of taxicabs in the city of Chicago to 3,000 on or before March 31, 1938, no taxicab license should thereafter be issued except upon transfer to permit replacement of a taxicab or in the annual renewal of any such license, or upon assignment of any such license, or upon assignment of the right to apply for such license as subsequently provided, or upon the revocation for cause
55 or termination in any other manner of any other license. This ordinance further provided that the city of Chicago, by ordinance, might authorize the issuance of licenses in excess of 3,000 without consent of existing licensees, provided that those licensees who voluntarily surrendered any taxicab licenses or their right to renew any taxicab licenses on or before March 31, 1938, should have the prior right to secure licenses issued above the figure of 3,000, up to the number of licenses so surrendered by them, unless such licensees should have released their right to apply for such additional licenses or should have failed to make application therefor within thirty days after publication of notice of public hearing upon the question of public convenience and necessity for the issuance of additional licenses. The ordinance further provided that as between licensees having a prior right by virtue of their surrender of licenses, to any new licenses in excess of 3,000 any additional licenses should be apportioned ratably between such licensees having such prior right in the proportion which the number of licenses surrendered by each licensee bears to the number surrendered by all licensees. The ordinance further provided that it should become effective when one or more licensees should file with the City Clerk formal written acceptance of the ordinance and should have surrendered at least 616 taxicab licenses. The 1937 ordinance expired, by its terms, on December 31, 1945, but, in June 1945, was extended for another five years.

13. The Circuit Court of Cook County held, in February 1946, in a suit by Yellow and Checker against the city of Chicago, that the acceptance of the 1937 ordinance by Yel-

low and Checker constituted a contract between the
of Chicago and Yellow and Checker. It also held that,
the terms of this contract, the city of Chicago was precl
from issuing taxicab licenses in excess of 3,000 with
the consent of Yellow and Checker until after it had
replaced those surrendered by Yellow and Checke
56 1938. This judgment of the Circuit Court was
firmed on appeal by the Supreme Court of Illi

14. When the investigation leading to the original c
plaint in this case was begun in February 1946, and at
time of the filing of the original complaint, about 3,
regular, annually renewable, and assignable cab licen
were outstanding in the city of Chicago, of which 1,
were issued to defendant Yellow, 1,000 to defendant Ch
er, which leased them to Cab Sales, and 405 were issue
others. During the investigation, and following March
1946, 275 temporary, one-year, non-transferable licen
terminating on December 31, 1946, were issued with
consent of Yellow and Checker, to so-called "indepe
ents." These temporary licenses were renewed for
calendar year in January 1947. In addition, there are
proximately 1,200 unlicensed taxicabs operating in Chic
at the time of filing this amendment to the complaint, wh
owners or operators are unable to obtain either regula
temporary taxicab licenses. Parmelee operates 85
licensed cabs in transferring passengers between railr
stations in Chicago.

15. Some 13,000 licenses to operate cabs are now
standing in the city of New York, of which 2,000 are
by National Transportation Co., Inc., a wholly ow
subsidiary of defendant Parmelee.

16. One-half of the 250 cabs in Pittsburgh are oper
by Pittsburgh Transportation Co., and the other half
operated by Yellow Cab Co. of Pittsburgh. Both of t
concerns are wholly owned subsidiaries of Parmelee.

17. Of the 214 cabs licensed in Minneapolis, 125 are
erated by Yellow Taxi Co. of Minneapolis which is a wh
owned subsidiary of Parmelee.

V

Offenses Charged

18. Beginning about January 1929 and continuing th
after up to and including the date of filing
57 amended complaint, the defendants have been
now are engaged in a combination and conspirac
restrain and to monopolize interstate trade and comm

in the sale of motor vehicles for use as cabs to the principal cab operating companies in Chicago, Illinois, Pittsburgh, Pennsylvania, New York, New York, and Minneapolis, Minnesota, and in the transportation as part of an interstate journey of railroad passengers and their luggage between railroad stations in the city of Chicago, Illinois, pursuant to contracts with railroads and railroad terminal associations, in violation of Sections 1 and 2 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, as amended, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," said Act being commonly known as the "Sherman Act." Defendants threaten to continue such offenses and will continue them unless the relief hereinafter prayed for in this complaint is granted.

19. The aforesaid combination and conspiracy to restrain and to monopolize has consisted of a continuing agreement and concert of action among the defendants, the substantial terms of which have been that defendants agree:

(a) To control the purchase of motor vehicles for use as cabs, by the principal cab-operating companies in Chicago, New York, Pittsburgh, and Minneapolis;

(b) That each such operating company will purchase and use as cabs only motor vehicles manufactured by CCM; and will not purchase for such use, or use, any motor vehicles made by other cab or automobile manufacturers;

(c) Yellow and Cab Sales will not attempt to compete with Parmelee for contracts with railroads or railroad terminal associations to transport passengers and their luggage between railroad stations in Chicago;

58 (d) To reduce the total number of taxicabs operated in the city of Chicago to 3,000, thereafter to induce the city of Chicago to enact an ordinance reducing the total number of taxicab licenses issued to 3,000, and to oppose and prevent any increase in the number of said taxicabs and licenses above 3,000;

(e) That Yellow and Checker will hold 2,595 of the 3,000 licenses issued by the city of Chicago, dividing them 1,595 to Yellow and 1,000 to Checker; that they would secure and divide among themselves, in a ratio of 60 per cent to Yellow and 40 per cent to Checker, any licenses above 3,000 which might be subsequently issued by the city of Chicago;

(f) That Checker will lease all of its licenses to Cab Sales for $180 per year per license;

(g) Yellow and Cab Sales will not compete with each other by using a make or style of cab other than that manufactured by CCM;

(h) That Checker and Yellow would prevent new operators, including veterans, from entering the cab business in Chicago and from buying taxicabs and replacements from concerns other than CCM, by annually renewing cab licenses for cabs they did not operate and had no intention of operating; and

(i) To acquire or gain control of the principal companies operating licensed cabs in Chicago which competed, or might compete, with Parmelee for contracts with railroads or railroad terminal associations for the transportation of interstate railroad passengers and their luggage between railroad stations.

59 Said combination and conspiracy has been formed and effectuated by divers means and methods, including the acts, agreements, and understandings hereinafter set forth.

20. About January 1929, Markin, then president of CCM, Ernest H. Miller, president of Yellow Taxi Corp., New York, and J. A. Sisto & Co., investment bankers owning 20 per cent of the outstanding stock of CCM, commenced negotiations to merge the more important cab operating companies in New York, Chicago, and other cities. One of the principal purposes of the proposed merger was to insure that these cab operating companies would thereafter purchase all of their motor vehicles for use as cabs from CCM and would not buy them from competitors of CCM. This plan of merger was thereafter carried out.

21. In furtherance of the plan, defendant Parmelee was organized April 12, 1929. It was financed in part by CCM, which purchased preferred stock and debentures for about $1,400,000. Ernest H. Miller became the first president and a director of Parmelee. Two of the other directors were also directors of CCM. In return for its stock and debentures, Parmelee promptly acquired 26 per cent (106,819 shares) of the outstanding stock of Chicago Yellow, 96 per cent (19,300 shares) of the outstanding stock of The Parmelee Company, 68 per cent (85,659 shares) of Yellow Taxi Corp., New York, and $2,052,417.50 in cash. During June 1929, Parmelee purchased an additional 8,350 shares of Chicago Yellow. During the same year, it pur-

chased the remainder of the stock of The Parmelee Company and 22,341 shares of Yellow Taxi Corp., New York, to increase its holdings in the latter company to 86 per cent of the total stock.

22. The Parmelee Company was dissolved in May 1934 and its business of transporting passengers between railroad stations in Chicago was taken over by defendant Parmelee.

23. Parmelee has, since its first acquisition of stock in Chicago Yellow, continuously owned a sufficiently large number of shares of such stock to control the policies and operations of Chicago Yellow and has controlled them. Parmelee's control of Chicago Yellow has, in turn, been controlled by Markin.

24. The operation of cabs in New York City by the various cab-operating companies acquired by Parmelee from time to time following 1929, including Yellow Taxi Corp., New York, and Motor Cab Transportation Co., have now been consolidated in National Transportation Co., Inc., a wholly owned subsidiary of Parmelee. Motor Cab Transportation Co. was purchased by Parmelee from CCM in September 1930, and 422,787 shares of common stock of Parmelee was paid to CCM as part of the transaction. Since the acquisition of this stock, CCM has continuously owned more than 51 per cent of the capital stock of Parmelee.

25. Parmelee acquired 74 per cent of the capital stock of Yellow Cab Company of Pittsburgh in June 1929, and another 9.7 per cent before the end of 1929. Parmelee has continuously owned more than 51 per cent of said stock ever since. In October 1929, Parmelee acquired all of the outstanding stock of Pittsburgh Transportation Company and has continuously owned said stock ever since. In June 1930, Parmelee acquired Red Cab Company, the only other competing Pittsburgh cab-operating company, and merged its operations with its other two Pittsburgh subsidiaries, thereby acquiring a complete monopoly of the business of operating cabs in Pittsburgh.

26. Parmelee caused the formation of Yellow Taxi Company of Minneapolis, a Delaware corporation, in February 1931, to operate cabs in Minneapolis. Parmelee acquired all of its stock upon its formation, and owned it at least until December 31, 1933. The assets of the Delaware corporation were then transferred to a Minnesota corporation of the same name in return for the capital stock of the latter. The Delaware corporation was then dissolv-

61 ed. Parmelee has continuously owned all of the capital stock of the Minnesota corporation since the dissolution of the Delaware concern.

27. In October 1929, DeLuxe Motor Cab Company was the third largest concern operating cabs in Chicago, with about 400 city taxicab licenses, and a substantial interest in DeLuxe was owned by Markin. At that time, Markin offered to sell all stock in DeLuxe to Parmelee for $388,000, or $100,000 and 16,000 shares of Parmelee, Parmelee also to assume liability for $332,000 in mortgage notes held by CCM. DeLuxe owned approximately 308 cabs, valued at about $363,000. Parmelee considered that, although DeLuxe had been losing money, its net worth, aside from the value of its taxicab licenses, exceeded its liabilities by about $92,000 as of August 1929. Parmelee also considered that the value of the city taxicab licenses held by DeLuxe, because of the 1929 city ordinance tending to limit the number of taxicab licenses in Chicago, was at least $1,000 per license, or $400,000. In addition, Parmelee considered that the purchase of the DeLuxe stock would be of value since such purchase would effectively prevent other interests not then operating in Chicago from acquiring DeLuxe and Parmelee would "control the operation of two out of the three large operating companies" in Chicago. These three were Yellow, DeLuxe, and Checker. Parmelee accepted the proposal of Markin and in February 1930 purchased, through General Transportation Company, a wholly owned subsidiary of Parmelee formed for this purpose, all outstanding stock of DeLuxe for $388,000, it being agreed that Markin and one Paul L. Amoreaux, who also owned a substantial interest in DeLuxe, would purchase 16,000 shares of Parmelee stock at $18 per share.

28. In 1930 Parmelee and M. M. Sokoll, president and director of Checker, caused the consolidation of DeLuxe and certain independent cab companies into a new company, Chicago Cab Company, one of the purposes of the consolidation being to prevent some outside company from entering the taxicab operating field in Chicago in competition with Yellow. In 1932, Cab Sales acquired a substan-

62 tial interest in Chicago Cab Company. In July 1932, it caused the company to suspend operations and the drivers to enter into contracts with Checker. This action was approved by CCM as it would assist in preventing interests hostile to CCM from obtaining a competitive position in Chicago.

29. The Transportation Management Corp., a Delaware corporation, became a wholly owned subsidiary of Parmelee in April 1929, and in that month it entered into so-called management contracts with Yellow, The Parmelee Company, and Yellow Taxi Corp., New York. These contracts were substantially identical in their terms except for amounts of payments to be made by the cab operating companies. Each operating company agreed, among other things, that it would not make any purchase of more than $500 without consulting and obtaining the approval of the management company, and that all purchases, the advertising policy, and the employment and activities of departmental heads and superintendents would be supervised by the management company. Each contract provided that Ernest H. Miller, then president of both Parmelee and of the management company, would, as long as he was president of the management company, perform some of the said management. Miller became a director of Chicago Yellow and of Yellow in May 1929 and held these positions, as well as the presidency of Parmelee and of the management company, until 1932. Miller was, in 1929, and had been, a co-conspirator with Markin in formulating and carrying out the conspiracy charged in this complaint. For these so-called management services Yellow agreed to pay $50,000.00 annually to the Transportation Management Co., The Parmelee Company agreed to pay $25,000.00 and Yellow Taxi Corp., New York, agreed to pay $50,000.00.

30. About the same time The Transportation Management Corporation agreed to manage the cab-operating companies, it entered into contracts with Markin and Ernest H. Miller. It agreed to pay Markin $25,000.00 annually to act as its management adviser and agreed to pay Miller $50,000.00 annually to act as its general manager.

63 The contract with Miller remained in effect until July 1932. The contract with Markin stated that Markin had no obligation to devote any specified or substantial portion of his time in rendering such services. Markin has continuously, since May 1929, been management adviser to The Transportation Management Corp. and, since May 1934, to its successor, Parmelee.

31. The Transportation Management Corp. was dissolved in May 1934 and its management functions and contracts were assumed by Parmelee. Parmelee continuously owned all of the capital stock of The Transportation Management Corp. from the time it first acquired it until the company was dissolved.

32. The terms of the management contracts described in paragraph 29 hereof have continued in effect substantially unchanged, through being incorporated in new contracts, except as to the sums paid thereunder, until the date of filing of this complaint. As Parmelee acquired additional subsidiaries following 1929, it caused them to enter into substantially identical management contracts.

33. Automotive Sales Corporation was incorporated in Delaware in April 1929. Three days later all of its stock was purchased by Parmelee for $1,000 and CCM agreed to give it 5 per cent commission on all cabs sold by it for CCM prior to April 30, 1934. A few days after the contract was executed, Automotive Sales Corporation ordered 1,000 cabs from CCM for Yellow. Yellow paid $1,906.00 for each of these cabs, and Automotive Sales was paid the sum of $95.30 per cab by CCM as its commission. This sum was included in the price paid by Yellow for said cabs.

34. Cab Sales was incorporated in January 1930, and said company has been managed and operated since that time by defendant Markin, who has been the owner of all outstanding stock of Cab Sales since about 1934. In February 1930, CCM settled litigation between it and Checker. As part of the settlement, Checker agreed
64 that its drivers would purchase all motor vehicles for use as cabs from Cab Sales for a period of five years at a price of $2,350 per cab, this price to be adjusted in proportion to changes in the list price of cabs manufactured by CCM. At about the same time, CCM appointed Cab Sales as exclusive agent for sales to Checker and agreed to sell cabs to Cab Sales at $1,906 per cab, this price likewise to be adjusted in proportion to changes in the list price. Thereafter, during the ensuing five years, large numbers of cabs were purchased by Checker drivers from Cab Sales, which in turn purchased said cabs from CCM at prices about $400 lower than the prices paid by said drivers.

35. Cab Sales on May 1, 1931, borrowed the sum of $500,000 from Yellow to finance its acquisition of 51 per cent of the capital stock of Checker. Yellow loaned the money to Benzoline Motor Fuel Co., another wholly owned subsidiary of Chicago Yellow, which then reloaned it to Cab Sales. Cab Sales agreed to repay the loan in installments, the last payment to be made in 1941. Part of the consideration for said loan was the agreement by Cab Sales that it and Checker would purchase from Benzoline all gasoline and lubricating oils used in the operation of "Checker" Cabs.

36. In May 1932, Cab Sales defaulted on the first payment due on the said $500,000 loan and Benzoline extended the due dates of payments. In October 1932, Yellow loaned $180,000 to its substantially wholly owned subsidiary, The Waverly Corporation, a holding company, which, during the same month, loaned Cab Sales another $200,000, also to be repaid over a ten-year period. Waverly made the loan in order that Cab Sales might finance its acquisition of additional shares of Checker.

37. From November 1932 until September 1942, Cab sales continuously owned more than 97 per cent of the capital stock of Checker. In September 1942, Markin caused Cab Sales to sell its holdings in Checker to its present owners in order to make them full associates in Markin's taxicab operations in Chicago.

38. Beginning in the year 1931, some drivers for Checker began to default on their payments for cabs purchased from Cab Sales. About the year 1932, Cab Sales began to foreclose on delinquent mortgage notes and to take over the ownership and operation of cabs. By 1936, Cab Sales actually owned and operated about 500 of the total number of taxicabs licensed to Checker. Thereafter, Cab Sales extended its ownership of cabs licensed to Checker and owned all of them by June 1941. Since that time, it has owned and operated all cabs for which Checker has city taxicab licenses.

39. From the month of May 1931 to the present time, defendant Markin has actually controlled and directed the operation of all taxicabs for which Checker has held licenses from the City of Chicago.

40. In 1933 CCM prevented a divorcement of Yellow from Parmelee. In August of that year, Yellow and Parmelee agreed that Parmelee would sell all of its 48,730 shares of Chicago Yellow stock to Yellow for the purpose, among others, of quieting newspaper criticism of Parmelee as "a gigantic taxicab monopoly spreading over the whole country" and because divorcement of Chicago Yellow from Parmelee might convince the Chicago City Council that previous criticism was unjustified and might induce them to raise taxicab rates which the Council had recently reduced. CCM, as owner of more than 51 per cent of the stock of Parmelee, objected to this transaction and Parmelee and Yellow agreed to rescind their agreement of sale. In December of the same year, CCM loaned Parmelee $197,500 with which to exercise an option to purchase from Yellow an additional 25,000 shares of stock in Chicago Yellow.

41. By the year 1937, the total number of cab licenses issued by the city of Chicago was 4,071, of which 2,166, or 53 per cent were issued to Yellow; 1,500, or 37 per
66 cent, were issued to Checker; and 405, or 10 per cent were issued to other cab operators.

42. About April 1937 Checker agreed with Yellow to reduce the number of cabs operated under its taxicab licenses. Yellow agreed to pay Checker one-half of the gross revenue lost by the latter by reason of fewer payments from drivers for its services. Pursuant to this agreement Checker reduced its cabs by about 336 during 1937 to a total of 1,164. During the same period Yellow reduced the number of its cabs by 155 to a total of 1,495.

43. In the summer of 1937, at the suggestion of Parmelee, Yellow and Checker agreed to induce the city of Chicago to reduce the total number of taxicab licenses to not more than 3,000, of which 1,500 would be issued to Yellow and 1,000 to Checker.

44. On January 3, 1938, following the enactment of the taxicab ordinance of December 22, 1937, referred to in paragraph 12 of this complaint, a contract was entered into between Yellow, Cab Sales, and Checker, which recited that under the terms of the ordinance of 1934, and by filing acceptance thereof, defendant Yellow had secured to itself the right to hold, own, and operate 2,166 taxicab licenses; the defendant Checker had secured to itself the right to hold, own, and operate 1,500 of said licenses; that defendant Yellow was not operating and had not for more than ninety days operated 511 of the licenses owned by it and did not have equipment available for the purpose of exercising the rights and privileges conferred on it by reason of such licenses, and therefore Checker maintained that each of said 511 licenses was immediately subject to forfeiture on complaint to the Mayor of the City of Chicago in accordance with the provisions of the ordinance of May 18, 1934; that the parties to said contract were desirous of securing a reduction in the number of taxicab licenses in the city of Chicago to not more than 3,000 but that Checker was unwilling to accept the provisions of said ordinance and to relinquish any of its licenses without com-
67 pensation therefor; and that Yellow was desirous of accepting the provisions of said ordinance and in making possible a reduction in the number of outstanding licenses to 3,000. In view of these considerations, defendant Checker promised to relinquish for cancellation by the city of Chicago 500 taxicab licenses held by it; and to sell to Yellow the right of Checker, under said ordinance, to

renew and obtain reissuance of 240 of the said 500 licenses to be surrendered by Checker. Defendant Yellow agreed to pay to Checker the sum of $550 per license for each taxicab license relinquished by Checker up to 500 licenses, for a total payment by Yellow to Checker of $320,000, which, at the option of Yellow, could be paid in the notes issued by Cab Sales in return for the $500,000 and $200,000 loans described in paragraphs 35 and 36 of this complaint. Said contract further provided that in the event that additional licenses above the number of 3,000 should be issued by the city of Chicago, over and above the number of licenses surrendered by Yellow and Checker, that Yellow would apply for and both parties would attempt to secure for it 60 per cent of all such additional licenses; and that Checker would apply for, and both parties would attempt to secure for Checker 40 per cent of such additional licenses, to the end that the total number of such additional licenses should be divided between Yellow and Checker on the basis of three-fifths to Yellow and two-fifths to Checker. Pursuant to said agreement, Checker surrendered 500 licenses for cancellation by the city of Chicago.

45. In addition to the above contract, Yellow agreed with Checker that it would surrender to the city of Chicago for cancellation a sufficient number of licenses to bring the total number of licenses down to the figure of 3,000, and Yellow did so surrender 571 licenses.

46. Beginning at some time prior to 1937, the pre-
68 cise time being unknown to plaintiff, and continuing to the date of filing this complaint, Cab Sales and Yellow have exchanged monthly statistics on their respective operations of cabs. Parmelee and CCM have, at various times during this period, acted as the intermediary for the exchange of these reports.

47. In 1938 the General Transportation Casualty Co., a New York corporation, was organized by Chicago Yellow, CCM and Cab Sales, for the purpose, among other things, of insuring taxicab companies against personal injury and property damage claims. In 1939 the company was reorganized and the name changed to the General Transportation Casualty and Surety Co. In 1944, the capital of the corporation was increased and Parmelee became an additional shareholder. This concern insures the cab operations of the defendants.

48. In 1938 Transportation Maintenance Corp., an Illinois corporation, was formed by Chicago Yellow, Parme-

lee, and Checker for the purpose of servicing all motor vehicles operated by each in the city of Chicago and vicinity. Prior thereto, each had serviced its own vehicles.

49. In the years 1936 and 1937 Yellow made application for and received 2,166 taxicab licenses, although it never operated more than 1,719 cabs at any time during said years, and for a short period it operated only 1,325. During the years 1938 to 1945, inclusive, Yellow applied for and received 1,595 taxicab licenses. The maximum number of cabs operated by it during each of said years is as follows: 1,495 in 1938; 1,351 in 1939; 1,173 in 1940; 1,338 in 1941; 1,450 in 1942; 1,400 in 1943; 1,200 in 1944; and 1,100 in 1945. During the period from June 1944 to January 1946, defendant Yellow has placed on the streets a daily average of less than 1,100 taxicabs. During the period from 1942 to 1946, Yellow continually had in storage 145 taxicabs on which annual licenses were secured, but which cabs were never removed from storage. Yellow annually ap-
69 plied for and received 1,595 taxicab licenses from 1938 to 1945, knowing it would not utilize all of said licenses to operate cabs.

50. During each of the years 1939 to 1941, inclusive, Checker applied for and received 1,000 taxicab licenses. The maximum number of cabs operated under the licenses during these years is as follows: 927 in 1939; 920 in 1940; and 928 in 1941. During 1945 Checker and Cab Sales together did not have available for operation as many cabs as Checker had licenses; and Checker made application for the renewal of 1,000 licenses in 1945 knowing that neither it nor Cab Sales would utilize all of them to operate cabs.

51. On January 16, 1946, the City Council of the City of Chicago passed a resolution authorizing the issuance of 250 licenses to veterans and, on January 22, 1946, the Public Vehicle License Commissioner of the City of Chicago issued notice to Yellow and Checker that he would cancel 234 licenses previously issued to Yellow and 87 previously issued to Checker, by reason of their failure to operate the number of taxicabs for which licenses had been issued.

52. Yellow thereupon instituted suit, in which Checker intervened as party plaintiff, to enjoin the City of Chicago and its officials from issuing said additional 250 licenses and from cancelling existing licenses issued to said defendants, and in support of said suit made representations and filed affidavits with the court that causes beyond the

control of Yellow and Checker made it impossible for them to procure taxicabs to replace those which had become inoperable, or to procure new parts for replacement in and repair of their taxicabs. In fact, Yellow, Checker, and Cab Sales could have purchased and placed in operation enough additional motor vehicles to operate a cab for each license if they had been willing and free to purchase motor vehicles manufactured by others than CCM.

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VI

Effects of the Conspiracy

53. The aforesaid combination and conspiracy has had, as was intended by the defendants herein, the following effects:

(1) Defendants have monopolized the business of operating cabs in the city of Chicago and have successfully excluded others, including veterans, from engaging in said business and from purchasing cabs and replacements thereof from concerns other than CCM;

(2) Competition has been eliminated between Yellow, Checker, Cab Sales, and Parmelee for contracts with railroads and railroad terminal associations for the transportation of interstate railroad passengers and their luggage between stations in Chicago; and the monopoly of Parmelee over said business has been promoted, protected, and assured;

(3) Since the year 1929, Yellow, Checker, Cab Sales, Parmelee, and Parmelee's cab operating subsidiaries in New York, Pittsburgh, and Minneapolis have been prevented and precluded from purchasing new motor vehicles for use as cabs from any manufacturer other than CCM, and other manufacturers of motor vehicles capable of use as cabs have been excluded from the opportunity of competing for said business;

(4) By reason of said conspiracy, Yellow, Checker, and Cab Sales, and Parmelee and its subsidiaries, have been required to pay more for motor vehicles purchased and operated by them as cabs than they would have had to pay in the absence of said conspiracy,

71 and other expenditures by said cab operating companies have been unnecessarily increased, which unnecessary expenditures have been reflected in, and have resulted in, high rates being charged the public for the transportation services rendered by said companies.

Prayer

Wherefore, Plaintiff Prays:

A. That, pursuant to Section 5 of the Sherman Act, an order be made and entered herein requiring each of the defendants as are not within this District to be brought before the Court in this proceeding as parties defendant, and directing the Marshals of the Districts in which they severally reside to serve summons upon them.

B. That the aforesaid combination and conspiracy in restraint of trade and conspiracy to monopolize be adjudged and decreed to be unlawful.

C. That defendants be required to release and waive any and all rights they may have or claim to have under the ordinance of the city of Chicago of December 22, 1937, and its extension, to secure additional taxicab licenses in excess of the number now held by Yellow and Checker.

D. That the agreement of January 3, 1938, between Yellow, Cab Sales, and Checker be declared to be illegal and of no force and effect, and that each party thereto be enjoined from enforcing, from attempting to enforce, and from observing any of the provisions thereof, and from entering into any similar agreement or understanding.

E. That the agreement between Parmelee and Markin, by which Markin is employed as adviser to Parmelee, shall be declared to be illegal and of no force and effect, and that Parmelee and Markin be enjoined from enforcing or attempting to enforce, and from observing any of the provisions thereof, and from entering into any similar agreement or understanding.

72 F. That all so-called management contracts entered into between Yellow, Chicago Yellow, and Parmelee or any of its subsidiaries, be declared to be illegal and of no force and effect, and that each defendant be enjoined from enforcing or attempting to enforce them, from observing any of the provisions thereof, and from entering into any similar agreement or understanding.

G. That Markin be required to divest himself of all stock or other interest in, or control over, Yellow, Chicago Yellow, Parmelee and all subsidiaries or affiliates of Parmelee, and be enjoined from hereafter acquiring any interest in, or ownership of stock of, or any control over any defendant or its subsidiaries other than CCM.

H. That the corporate defendants be required to divest themselves of all interest in, and ownership of stock of, each other, and of control of each other, to the end that each of the following groups of defendants shall be independent of, and free to compete with, each other:

1. CCM;
2. Cab Sales and Checker;
3. Parmelee, Yellow Taxi Co. of Minneapolis, Yellow Cab Co. of Pittsburgh, Pittsburgh Transportation Co., and National Transportation Co., Inc.;
4. Yellow and Chicago Yellow.

I. That each corporate defendant be enjoined from hereafter acquiring any interest in, or ownership of stock of, or any control over, any defendant or its subsidiaries other than one in its own group as stated in the preceding paragraph.

J. That either Chicago Yellow or Cab Sales be required to divest itself of all of its interest in and ownership of the stock of Transportation Maintenance Corporation,
73 so that there shall be no community of interest in, or control over, said Transportation Maintenance Corporation by Chicago Yellow and Cab Sales.

K. That the plaintiff have such further, general, and different relief as the nature of the case may require and the Court may deem proper in the premises.

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Attorney General

MELVILLE C. WILLIAMS
Melville C. Williams
Special Assistant to the Attorney General

JOHN F. SONNETT
John F. Sonnett
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DONALD G. BALTHIS
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(Proof of Service Attached but not Copied)

75 In the District Court of the United States

(Title Omitted)

Answer of Defendant Cab Sales and Parts Corporation—Filed Oct. 2, 1947

The defendant, Cab Sales and Parts Corporation, by Jesmer and Jesmer, its attorneys, for its answer to the amended complaint:

1. Denies, with respect to paragraph "1" of the amended complaint, any violation of the Sherman Act.

2. Denies the allegations contained in paragraph "2" of the amended complaint that the defendant Chicago Yellow Cab Company, Inc. transacts business within the Eastern Division of the Northern District of Illinois and is found therein.

3. (a). Denies knowledge or information sufficient to form a belief as to any of the allegations contained in paragraph "3(b)" of the amended complaint, except that it admits that Chicago Yellow Cab Company, Inc. is a New York corporation and owns all the stock of Yellow.

(b). Denies knowledge or information sufficient to form a belief as to any of the allegations contained in paragraph "3(c)" of the amended complaint, except that it admits Parmelee Transportation Company is a

76 Delaware corporation with principal offices at 300 North Desplaines Street, Chicago, Illinois.

(c). Denies knowledge or information sufficient to form a belief as to any of the allegations contained in paragraph "3(d)" of the amended complaint, except that it admits that Checker Cab Manufacturing Corporation is a New Jersey corporation with principal offices at Kalamazoo, Michigan and manufactures and sells cabs.

(d). Denies knowledge or information sufficient to form a belief as to any of the allegations contained in paragraph "3(f)" of the amended complaint, except that it admits that Checker Taxi Company is a Delaware corporation with principal offices at 1401 West Jackson Boulevard, Chicago, Illinois.

(e). Denies knowledge or information sufficient to form a belief as to any of the allegations contained in the first two sentences of paragraph "3(g)" of the amended complaint, except that it admits that Markin is president of CCM and owns all the stock of Cab Sales; and denies each and every allegation contained in the last sentence of said paragraph.

4. Denies each and every allegation contained in paragraph "4" of the amended complaint, except that it admits that the City of Chicago, Illinois, is a terminus of a number of railroads engaged in the transportation of passengers through many of the states of the United States; that some passengers are transported through Chicago by rail; that some passengers leave the trains on which they traveled to Chicago, go to other stations, from two city blocks to two miles distant, and board other trains operated by other railroads; and that some passengers use limousine-coaches and trucks operated by Parmelee in transporting
77 themselves and their luggage from one station to another.

5. Denies knowledge or information sufficient to form a belief as to any of the allegations contained in paragraph "5" of the amended complaint.

6. Denies knowledge or information sufficient to form a belief as to any of the allegations contained in paragraph "6" of the amended complaint, except that it admits that CCM manufactures taxicabs at its factory in Kalamazoo, Michigan and has shipped some of them to Cab Sales in Chicago, Illinois.

7. Denies knowledge or information sufficient to form a belief as to any of the allegations contained in paragraph "7" of the amended complaint, except that it admits that some of the taxicabs purchased by Cab Sales have been manufactured by CCM and shipped from Kalamazoo, Michigan.

8. Denies knowledge or information sufficient to form a belief as to any of the allegations contained in paragraphs "8" and "9" of the amended complaint.

9. Denies each and every allegation contained in paragraph "10" of the amended complaint, except that it admits that prior to 1929 the ordinances of the City of Chicago did not restrict or limit the number of taxicab licenses which might be issued; and that on or about September 25, 1929 the City of Chicago enacted a taxicab ordinance (Municipal Code of Chicago (1931 Ed.) Chap. 41), to which reference is made for its terms.

10. Denies each and every allegation contained in paragraph "11" of the amended complaint, except that it admits that on or about May 18, 1934 the City of Chicago enacted a taxicab ordinance (Municipal Code of Chicago, Chapter 195A), to which reference is made for its terms.

11. Denies each and every allegation contained in paragraph "12" of the amended complaint, except that it admits that on or about December 22, 1937 and on or

78 about June 26, 1945 the City of Chicago enacted taxicab ordinances (Municipal Code of Chicago, Chapter 196A), to which reference is made for their terms.

12. Denies each and every allegation contained in paragraph "13" of the amended complaint, except that it admits that in February 1946 the Circuit Court of Cook County entered a decree in the case of Yellow Cab Company against the City of Chicago *et al* (No. 46C943), which was affirmed by the Supreme Court of Illinois (396 Ill. 388), to which decree and affirmance reference is made for their terms.

13. Denies each and every allegation contained in paragraph "14" of the amended complaint, except that it admits that in February 1946 and July 1946, 3000 taxicab licenses issued by the City of Chicago were outstanding, of which 1595 were issued to Yellow, 1000 to Checker which leased them to Cab-Sales, and 405 to others; and except that it denies knowledge or information sufficient to form a belief as to any of the allegations contained in the last two sentences of said paragraph.

14. Denies knowledge or information sufficient to form a belief as to any of the allegations contained in paragraphs "15", "16" and "17" of the amended complaint.

15. Denies each and every allegation contained in paragraphs "18" and "19" of the amended complaint.

16. Denies knowledge or information sufficient to form a belief as to any of the allegations contained in paragraphs "20", "21", "22", "23", "24", "25", "26" and "27" of the amended complaint.

79 17. Denies each and every allegation contained in paragraph "28" of the amended complaint.

18. Denies knowledge or information sufficient to form a belief as to any of the allegations contained in paragraphs "29", "30", "31", "32" and "33", of the amended complaint.

19. Denies each and every allegation contained in paragraph "34" of the amended complaint, except that it admits that Cab Sales was incorporated on or about January 20, 1930 and that on or about February 8, 1930 CCM, Cab Sales and Checker Taxi Company, an Illinois corporation, entered into an agreement to which reference is made for its terms.

20. Denies each and every allegation contained in paragraph "35" of the amended complaint, except that it admits that in May 1931 Cab Sales borrowed the sum of $500,000 from Benzoline Motor Fuel Company, a wholly owned subsidiary of Chicago Yellow, which had borrowed

a like sum from Yellow, and that in May 1931 an agreement was made between Cab Sales and Benzoline for the supply of motor fuel and lubricating oil, to which reference is made for its terms.

21. Denies each and every allegation contained in paragraph "36" of the amended complaint, except that it admits that in 1932 Cab Sales and Benzoline extended the dates of payment of said loan, and that in October 1932 Cab Sales borrowed the sum of $200,000 from The Waverly Corporation which had borrowed the sum of $180,000 from Yellow.

22. Denies each and every allegation contained in paragraph "37" of the amended complaint, except that it admits that from November 1932 until September 1942 Cab Sales continuously owned more than 97% of the capital stock of Checker, and that in September 1942 Cab Sales sold its stock in Checker to the firm of Freimark & Co.

23. Denies each and every allegation contained
80 in paragraph "39" of the amended complaint.

24. Denies knowledge or information sufficient to form a belief as to any of the allegations contained in paragraph "40" of the amended complaint.

25. Denies each and every allegation contained in paragraph "41" of the amended complaint except that it admits that in 1937 the total number of taxicab licenses issued by the City of Chicago was 4,108, of which 2,166 were issued to Yellow, 1,500 to Checker and 442 to others.

26. Denies each and every allegation contained in paragraphs "42", "43", "44" and "45" of the amended complaint, except that it admits that on or about January 3, 1938 an agreement was made between Yellow and Cab Sales and Checker, to which reference is made for its terms, and that Checker surrendered 500 and Yellow 571 licenses to the City of Chicago.

27. Denies each and every allegation contained in paragraph "46" of the amended complaint.

28. Denies each and every allegation contained in paragraph "47" of the amended complaint, except that it admits that General Transportation Casualty Company was incorporated in 1938 under the laws of the State of New York for the purpose, among other things, of insuring taxicab companies against personal injury and property damage claims; that in 1939 its name was changed to General Transportation Casualty and Surety Co.; and that in 1944 its capital was increased.

29. Denies each and every allegation contained in paragraph "48" of the amended complaint, except that it admits

that in 1938 Transportation Maintenance Corporation was incorporated under the laws of the State of Illinois, for the purpose of repair and maintenance of motor vehicles.

81 30. Denies knowledge or information sufficient to form a belief as to any of the allegations contained in paragraph "49" of the amended complaint.

31. Denies the allegations contained in paragraph "50" of the amended complaint that Checker knew that neither Checker nor Cab Sales would utilize all of said licenses to operate cabs.

32. Denies each and every allegation contained in paragraph "51" of the amended complaint, except that it admits that on or about January 16, 1946 the City Council of the City of Chicago passed a purported resolution, to which reference is made for its terms, and on or about January 22, 1946 the Public Vehicle License Commissioner sent purported notices to Yellow and Checker, to which reference is made for their terms.

33. Denies each and every allegation contained in paragraph "52" of the amended complaint, except that it admits that Yellow commenced a suit (No. 46C943) in the Circuit Court of Cook County, Illinois, in which Checker intervened as a party plaintiff, to which reference is made for the proceedings therein.

34. Denies each and every allegation contained in paragraph "53" of the amended complaint.

PARTIAL DEFENSE

35. To the extent that the amended complaint is based on intrastate commerce, including taxicab services within, and ordinances of, the City of Chicago, Illinois, it fails to state a claim upon which relief can be granted.

36. To the extent that the amended complaint asserts charges, contains allegations and requests relief

82 based on said taxicab services within, and ordinances of, the City of Chicago, Illinois, it fails to comply with the mandate of the Supreme Court of the United States entered in this cause on July 24, 1947.

WHEREFORE the defendant Cab Sales and Parts Corporation demands judgment dismissing the amended complaint, with the costs and disbursements of this action.

JESMER AND JESMER
By Julius Jesmer
A Member
Attorneys for the defendant Cab Sales and Parts Corporation

84 In the District Court of the United States

(Title Omitted)

Answer of Defendant Checker Taxi Company—Filed Oct. 2, 1947.

The defendant, Checker Taxi Company, by Jesmer and Jesmer, its attorneys, for its answer to the amended complaint:

1. Denies, with respect to paragraph "1" of the amended complaint, any violation of the Sherman Act.

2. Denies the allegations contained in paragraph "2" of the amended complaint that the defendant Chicago Yellow Cab Company, Inc. transacts business within the Eastern Division of the Northern District of Illinois and is found therein.

3. (a). Denies knowledge or information sufficient to form a belief as to any of the allegations contained in paragraph "3(b)" of the amended complaint, except that it admits that Chicago Yellow Cab Company, Inc. is a New York corporation and owns all the stock of Yellow.

(b). Denies knowledge or information sufficient to form a belief as to any of the allegations contained in paragraph "3(c)" of the amended complaint, except that it admits

85 Parmelee Transportation Company is a Delaware corporation with principal offices at 300 North Desplaines Street, Chicago, Illinois.

(c). Denies knowledge or information sufficient to form a belief as to any of the allegations contained in paragraph "3(d)" of the amended complaint, except that it admits that Checker Cab Manufacturing Corporation is a New Jersey corporation with principal offices in Kalamazoo, Michigan and manufactures and sells cabs.

(d). Denies knowledge or information sufficient to form a belief as to any of the allegations contained in paragraph "3(e)" of the amended complaint, except that it admits that Cab Sales and Parts Corporation is an Illinois corporation with principal offices at 1401 West Jackson Boulevard, Chicago, Illinois, and operates "Checker" cabs in Chicago.

(e) Denies each and every allegation contained in paragraph "3(f)" of the amended complaint, except that it admits that it is a Delaware corporation with principal offices at 1401 West Jackson Boulevard, Chicago, Illinois; that it has no employees; that it has 1,000 taxicab licenses issued by the City of Chicago, which it leases to Cab Sales

for $180 per year per license; and admits also the allegations contained in the last sentence of said paragraph.

(f) Denies knowledge or information sufficient to form a belief as to any of the allegations contained in paragraph "3(g)" of the amended complaint, except that it admits that Markin is president of CCM.

4. Denies each and every allegation contained in paragraph "4" of the amended complaint, except that it admits that the City of Chicago, Illinois, is a terminus of a number of railroads engaged in the transportation of passengers through many of the states of the United States; that some passengers are transported through Chicago by rail; that some passengers leave the trains on which they traveled to Chicago, go to other stations, from two city blocks to two miles distant, and board other trains operated by other railroads; and that some passengers use limousine coaches and trucks operated by Parmelee in transporting themselves and their luggage from one station to another.

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5. Denies knowledge or information sufficient to form a belief as to any of the allegations contained in paragraph "5" of the amended complaint.

6. Denies knowledge or information sufficient to form a belief as to any of the allegations contained in paragraph "6" of the amended complaint, except that it admits that CCM manufactures taxicabs at its factory in Kalamazoo, Michigan and has shipped some of them to Cab Sales in Chicago, Illinois.

7. Denies knowledge or information sufficient to form a belief as to any of the allegations contained in paragraph "7" of the amended complaint, except that it admits that some of the taxicabs purchased by Cab Sales have been manufactured by CCM and shipped from Kalamazoo, Michigan.

8. Denies knowledge or information sufficient to form a belief as to any of the allegations contained in paragraphs "8" and "9" of the amended complaint, except that it admits that in January 1929, 1750 taxicab licenses were issued to it, and 2350 to Yellow.

9. Denies each and every allegation contained in paragraph "10" of the amended complaint, except that it admits that prior to 1929 the ordinances of the City of Chicago did not restrict or limit the number of taxicab licenses which might be issued; and that on or about September 25, 1929 the City of Chicago enacted a taxicab

87

ordinances (Municipal Code of Chicago (1931 Ed.) Chap. 41), to which reference is made for its terms.

10. Denies each and every allegation contained in paragraph "11" of the amended complaint, except that it admits that on or about May 18, 1934 the City of Chicago enacted a taxicab ordinance (Municipal Code of Chicago, Chapter 195A), to which reference is made for its terms.

11. Denies each and every allegation contained in paragraph "12" of the amended complaint, except that it admits that on or about December 22, 1937 and on or about June 26, 1945 the City of Chicago enacted taxicab ordinances (Municipal Code of Chicago, Chapter 196A), to which reference is made for their terms.

12. Denies each and every allegation contained in paragraph "13" of the amended complaint, except that it admits that in February, 1946 the Circuit Court of Cook County entered a decree in the case of Yellow Cab Company against the City of Chicago *et al.* (No. 46C943), which was affirmed by the Supreme Court of Illinois (396 Ill. 388), to which decree and affirmance reference is made for their terms.

13. Denies each and every allegation contained in paragraph "14" of the amended complaint, except that it admits that in February 1946 and July 1946, 3000 taxicab licenses issued by the City of Chicago were outstanding, of which 1595 were issued to Yellow, 1000 to Checker which leased them to Cab Sales, and 405 to others; and except that it denies knowledge or information sufficient to form a belief as to any of the allegations contained in the last two sentences of said paragraph.

88 14. Denies knowledge or information sufficient to form a belief as to any of the allegations contained in paragraphs "15", "16", and "17" of the amended complaint.

15. Denies each and every allegation contained in paragraphs "18" and "19" of the amended complaint.

16. Denies knowledge or information sufficient to form a belief as to any of the allegations contained in paragraphs "20", "21", "22", "23", "24", "25", "26" and "27" of the amended complaint.

17. Denies each and every allegation contained in paragraph "28" of the amended complaint.

18. Denies knowledge or information sufficient to form a belief as to any of the allegations contained in paragraphs "29", "30", "31", "32" and "33" of the amended complaint.

19. Denies each and every allegation contained in paragraph "34" of the amended complaint, except that it admits that Cab Sales was incorporated on or about January 20, 1930 and that on or about February 8, 1930 CCM, Cab Sales and Checker Taxi Company, an Illinois corporation, entered into an agreement to which reference is made for its terms.

20. Denies knowledge or information sufficient to form a belief as to any of the allegations contained in paragraphs "35" and "36" of the amended complaint.

21. Denies each and every allegation contained in paragraph "37" of the amended complaint, except that it admits that from November 1932 until September 1942 Cab Sales continuously owned more than 97% of the capital stock of Checker, and that in September 1942 Cab Sales sold its stock in Checker to the firm of Freimark & Co.

22. Denies each and every allegation contained in paragraph "39" of the amended complaint.

89 23. Denies knowledge or information sufficient to form a belief as to any of the allegations contained in paragraph "40" of the amended complaint.

24. Denies each and every allegation contained in paragraph "41" of the amended complaint except that it admits that in 1937 the total number of taxicab licenses issued by the City of Chicago was 4,108 of which 2,166 were issued to Yellow, 1,500 to Checker and 442 to others.

25. Denies each and every allegation contained in paragraphs "42", "43", "44" and "45" of the amended complaint, except ~~that it admits~~ that on or about January 3, 1938 an agreement was made between Yellow and Cab Sales and Checker, to which reference is made for its terms, and that Checker surrendered 500 and Yellow 571 licenses to the City of Chicago.

26. Denies knowledge or information sufficient to form a belief as to any of the allegations contained in paragraphs "46" and "47" of the amended complaint.

27. Denies each and every allegation contained in paragraph "48" of the amended complaint, except that it admits that in 1938 Transportation Maintenance Corporation was incorporated under the laws of the State of Illinois, for the purpose of repair and maintenance of motor vehicles.

28. Denies knowledge or information sufficient to form a belief as to any of the allegations contained in paragraph "49" of the amended complaint.

29. Denies the allegations contained in paragraph "50" of the amended complaint that it knew that neither it nor Cab Sales would utilize all of said licenses to operate cabs.

30. Denies each and every allegation contained in paragraph "51" of the amended complaint, except that it admits that on or about January 16, 1946 the City Council of the City of Chicago passed a purported resolution, to which reference is made for its terms, and on or about January 22, 1946 the Public Vehicle License Commissioner sent purported notices to Yellow and Checker, to which reference is made for their terms.

31. Denies each and every allegation contained in paragraph "52" of the amended complaint, except that it admits that Yellow commenced a suit (No. 46C943) in the Circuit Court of Cook County, Illinois, in which Checker intervened as a party plaintiff, to which reference is made for the proceedings therein.

32. Denies each and every allegation contained in paragraph "53" of the amended complaint.

PARTIAL DEFENSE

33. To the extent that the amended complaint is based on intrastate commerce, including taxicab services within, and ordinances of, the City of Chicago, Illinois, it fails to state a claim upon which relief can be granted.

34. To the extent that the amended complaint asserts charges, contains allegations and requests relief based on said taxicab services within, and ordinances of, the City of Chicago, Illinois, it fails to comply with the mandate of the Supreme Court of the United States entered in this cause on July 24th, 1947.

WHEREFORE the defendant Checker Taxi Company demands judgment dismissing the amended complaint, with the costs and disbursements of this action.

JESMER and JESMER
By Julius Jesmer
A Member
Attorneys for the defendant
Checker Taxi Company

92 In the District Court of the United States

Answer of Defendant Checker Cab Manufacturing Corporation—Filed Oct. 2, 1947

(Title Omitted)

The defendant, Checker Cab Manufacturing Corporation, by Winston, Strawn and Shaw, its attorneys, for its answer to the amended complaint:

1. Denies, with respect to paragraph "1" of the amended complaint, any violation of the Sherman Act. 2. Denies the allegations contained in paragraph "2" of the amended complaint that the defendant Chicago Yellow Cab Company, Inc. transacts business within the Eastern Division of the Northern District of Illinois and is found therein.

3 (a). Denies the allegations contained in paragraph "3(b)" of the amended complaint that Chicago Yellow Cab Company, Inc. has principal offices at 57 East 21st Street, Chicago, Illinois.

(b). Denies each and every allegation contained in paragraph "3(c)" of the amended complaint, except that it admits that Parmelee is a Delaware corporation, with principal offices at 300 North Desplaines Street, Chicago, Illinois; that Parmelee operates limousine-coaches

93 and trucks in Chicago to transport passengers and their luggage from one railroad station to another; that Parmelee owns 29.5% of the outstanding stock of Chicago Yellow, 40% of the outstanding stock of General Transportation Casualty and Surety Company, all the outstanding stock of National Transportation Co. Inc., a New York corporation operating cabs in New York, New York, all the outstanding stock of Parmelee System, Inc., a New York corporation, all the outstanding stock of Yellow Cab Company of Pittsburgh, a Pennsylvania corporation operating cabs in Pittsburgh, Pennsylvania (into which Pittsburgh Transportation Company, a Pennsylvania corporation was merged, effective after the close of business December 31, 1946, pursuant to an order made by the Pennsylvania Public Utility Commission on August 21, 1946), and all the outstanding stock of Yellow Taxi Company of Minneapolis, a Minnesota corporation operating cabs in Minneapolis, Minnesota.

(c). Denies the allegations contained in paragraph "3(d)" of the amended complaint that CCM owns 30% of the capital stock of General Transportation Casualty and Surety Company.

(d). Denies knowledge or information sufficient to form a belief as to any of the allegations contained in paragraph "3(e)" of the amended complaint, except that it admits that Cab Sales and Parts Corporation is an Illinois corporation with principal offices at 1401 West Jackson Boulevard, Chicago, Illinois, operates "Checker" cabs in Chicago, and owns 35.7% of the outstanding stock of CCM.

(e). Denies knowledge or information sufficient to form a belief as to any of the allegations contained in paragraph "3(f)" of the amended complaint, except that
94 it admits that Checker Taxi Company is a Delaware Corporation with principal offices at 1401 West Jackson Boulevard, Chicago, Illinois.

(f). Denies knowledge or information sufficient to form a belief as to any of the allegations contained in the first two sentences of paragraph "3(g)" of the amended complaint, except that it admits that Markin is president of CCM and owns 12.2% of the outstanding stock of CCM; and denies each and every allegation contained in the last sentence of said paragraph.

4. Denies each and every allegation contained in paragraph "4" of the amended complaint, except that it admits that the City of Chicago, Illinois, is a terminus of a number of railroads engaged in the transportation of passengers through many of the states of the United States; that some passengers are transported through Chicago by rail; that some passengers leave the trains on which they traveled to Chicago, go to other stations, from two city blocks to two miles distant, and board other trains operated by other railroads; and that same passengers use limousine-coaches and trucks operated by Parmelee in transporting themselves and their luggage from one station to another.

5. Denies knowledge or information sufficient to form a belief as to any of the allegations contained in paragraph "5" of the amended complaint.

6. Denies each and every allegation contained in paragraph "6" of the amended complaint, except that it admits that CCM manufactures taxicabs at its factory in Kalamazoo, Michigan, and has shipped some of them to Yellow and Cab Sales in Chicago, Illinois, and to subsidiaries of Parmelee in New York City, Pittsburgh and Minneapolis.

7. Denies each and every allegation contained
95 in paragraph "7" of the amended complaint, except that it admits that some of the taxicabs purchased

by Cab Sales, Yellow and subsidiaries of Parmelee, have been manufactured by CCM and shipped from Kalamazoo, Michigan.

8(a). Denies, with respect to paragraph "8" of the amended complaint, the commencement or existence of any conspiracy.

(b). Denies knowledge or information sufficient to form a belief as to any of the allegations contained in paragraph "8(c)" of the amended complaint, except that it admits that in January 1929 Parmelee had not been incorporated.

(c). Denies knowledge or information sufficient to form a belief as to any of the allegations contained in paragraph "8(d)" of the amended complaint, except that it admits that in January 1929 Checker held 1,750 taxicab licenses issued by the City of Chicago.

9. Denies each and every allegation contained in paragraph "10" of the amended complaint, except that it admits that prior to 1929 the ordinances of the City of Chicago did not restrict or limit the number of taxicab licenses which might be issued; and that on or about September 25, 1929 the City of Chicago enacted a taxicab ordinance (Municipal Code of Chicago (1931 Ed.) Chap. 41), to which reference is made for its terms.

10. Denies each and every allegation contained in paragraph "11" of the amended complaint, except that it admits that on or about May 18, 1934 the City of Chicago enacted a taxicab ordinance (Municipal Code of Chicago, Chapter 195A), to which reference is made for its terms.

11. Denies each and every allegation contained in paragraph "12" of the amended complaint, except
96 that it admits that on or about December 22, 1937 and on or about June 26, 1945 the City of Chicago enacted taxicab ordinances (Municipal Code of Chicago, Chapter 196A), to which reference is made for their terms.

12. Denies each and every allegation contained in paragraph "13" of the amended complaint, except that it admits that in February 1946 the Circuit Court of Cook County entered a decree in the case of Yellow Cab Company against the City of Chicago *et al.* (No. 46C943), which was affirmed by the Supreme Court of Illinois (396 Ill. 388), to which decree and affirmance reference is made for their terms.

13. Denies each and every allegation contained in paragraph "14" of the amended complaint, except that it admits that in February 1946 and July 1946, 3000 taxicab licenses

issued by the City of Chicago were outstanding, of which 1595 were issued to Yellow, 1000 to Checker which leased them to Cab Sales, and 405 to others; that Parmelee operates limousine-coaches in transporting passengers between railroad stations in Chicago; and except that it denies knowledge or information sufficient to form a belief as to the allegations of said paragraph that there were approximately 1200 unlicensed taxicabs operating in Chicago at the time of filing the amended complaint, whose owners or operators are unable to obtain either regular or temporary taxicab licenses.

14. Denies each and every allegation contained in paragraphs "16", "18", "19" and "20" of the amended complaint.

15. Denies knowledge or information sufficient to form a belief as to any of the allegations contained in paragraph "21" of the amended complaint, except that it
97 admits that Parmelee was incorporated on or about April 12, 1929; that during April 1929 CCM purchased 10,000 shares of preferred stock of Parmelee, Ernest H. Miller was elected president and director of Parmelee and two directors of CCM were elected directors of Parmelee.

16. Denies knowledge or information sufficient to form a belief as to any of the allegations contained in paragraphs "22" and "23" of the amended complaint.

17. Denies each and every allegation contained in paragraph "24" of the amended complaint, except that it admits that in September 1930 it acquired 422,787 shares of common stock of Parmelee and that it has since owned more than 51% of the capital stock of Parmelee.

18. Denies knowledge or information sufficient to form a belief as to any of the allegations contained in paragraphs "25", "26" and "27" of the amended complaint.

19. Denies knowledge or information sufficient to form a belief as to any of the allegations contained in the first three sentences of paragraph "28" of the amended complaint; and denies each and every allegation contained in the last sentence of said paragraph.

20. Denies knowledge or information sufficient to form a belief as to any of the allegations contained in paragraphs "29", "30", "31" and "32".

21. Denies knowledge or information sufficient to form a belief as to any of the allegations contained in paragraph "33" of the amended complaint, except that it admits that on or about April 29, 1929 Automotive Sales Corporation

and CCM entered into an agreement, to which reference is made for its terms, under which Automotive Sales Corporation obtained for CCM an order from Yellow for 1000 cabs at the price of $1996 per cab, of which Automotive Sales Corporation received a commission of $95.30 per cab.

22. Denies knowledge or information sufficient to form a belief as to any of the allegations contained in paragraph "34" of the amended complaint, except that it admits that on or about February 8, 1930 CCM, Cab Sales and Checker Taxi Company, an Illinois corporation, entered into an agreement, to which reference is made for its terms.

23. Denies knowledge or information sufficient to form a belief as to any of the allegations contained in paragraphs "35", "36", "37", "38" and "39", of the amended complaint.

24. Denies each and every allegation contained in paragraph "40" of the amended complaint.

25. Denies each and every allegation contained in paragraph "41" of the amended complaint, except that it admits that in 1937 the total number of taxicab licenses issued by the City of Chicago was 4,108, of which 2,166 were issued to Yellow, 1,500 to Checker and 442 to others.

26. Denies knowledge or information sufficient to form a belief as to any of the allegations contained in paragraphs "42", "43", "44" and "45", of the amended complaint.

27. Denies knowledge or information sufficient to form a belief as to any of the allegations contained in the first sentence of paragraph "46" of the amended complaint and denies each and every allegation contained in the last sentence of said paragraph.

28. Denies each and every allegation contained in paragraph "47" of the amended complaint, except that it admits that General Transportation Casualty Company was incorporated in 1938 under the laws of the State of New York for the purpose, among other things, of insuring taxicab companies against personal injury and property damage claims; that in 1939 its name was changed
99 to General Transportation Casualty and Surety Co.; that in 1944 its capital was increased.

29. Denies knowledge or information sufficient to form a belief as to any of the allegations contained in paragraphs "48", "49", "50", "51" and "52" of the amended complaint.

30. Denies each and every allegation contained in paragraph "53" of the amended complaint.

PARTIAL DEFENSE

31. To the extent that the amended complaint is based on intrastate commerce, including taxicab services within, and ordinances of, the City of Chicago, Illinois, it fails to state a claim upon which relief can be granted.

32. To the extent that the amended complaint asserts charges, contains allegations and requests relief based on said taxicab services within, and ordinances of, the City of Chicago, Illinois, it fails to comply with the mandate of the Supreme Court of the United States entered in this cause on July 24, 1947.

WHEREFORE the defendant Checker Cab Manufacturing Corporation demands judgment dismissing the amended complaint, with the costs and disbursements of this action.

WINSTON, STRAWN AND SHAW
By: CHARLES J. CALDERINI
A Member
Attorneys for the defendant
Checker Cab Manufacturing Corporation

SAMUEL H. KAUFMAN
Samuel H. Kaufman
Of Counsel

101 In the District Court of the United States
(Title Omitted)

Answer of Defendant Morris Markin—Filed Oct. 2, 1947

The defendant, Morris Markin, by Winston, Strawn and Shaw, his attorneys, for his answer to the amended complaint:

1. Denies, with respect to paragraph "1" of the amended complaint, any violation of the Sherman Act.

2. Denies the allegations contained in paragraph "2" of the amended complaint that the defendant Chicago Yellow Cab Company, Inc. transacts business within the Eastern Division of the Northern District of Illinois and is found therein.

3 (a). Denies the allegations contained in paragraph "3(b)" of the amended complaint that Chicago Yellow Cab Company, Inc. has principal offices at 57 East 21st Street, Chicago, Illinois.

(b). Denies each and every allegation contained in paragraph "3(c)" of the amended complaint, except that he admits that Parmelee is a Delaware corporation, with prin-

cipal offices at 300 North Desplaines Street, Chicago,
102 Illinois; that Parmelee operates limousine-coaches and trucks in Chicago to transport passengers and their luggage from one railroad station to another; that Parmelee owns 29.5% of the outstanding stock of Chicago Yellow, 40% of the outstanding stock of General Transportation Casualty and Surety, all the outstanding stock of National Transportation Co. Inc., a New York corporation operating cabs in New York, New York, all the outstanding stock of Parmelee System, Inc., a New York corporation, all the outstanding stock of Yellow Cab Company of Pittsburgh, a Pennsylvania corporation operating cabs in Pittsburgh, Pennsylvania (into which Pittsburgh Transportation Company, a Pennsylvania corporation was merged, effective after the close of business December 31, 1946, pursuant to an order made by the Pennsylvania Public Utility Commission on August 21, 1946), and all the outstanding stock of Yellow Taxi Company of Minneapolis, a Minnesota corporation operating cabs in Minneapolis, Minnesota.

(c). Denies the allegations contained in paragraph "3(d)" of the amended complaint that CCM owns 30% of the capital stock of General Transportation Casualty and Surety Company.

(d). Denies knowledge or information sufficient to form a belief as to any of the allegations contained in paragraph "3(f)" of the amended complaint, except that he admits that Checker Taxi Company is a Delaware corporation with principal offices at 1401 West Jackson Boulevard, Chicago, Illinois.

(e). Denies the allegations contained in paragraph "3(g)" of the amended complaint that he has authorized, ordered, or done the acts of Cab Sales and CCM con-
103 stituting the offenses thereafter charged in the amended complaint.

4. Denies each and every allegation contained in paragraph "4" of the amended complaint, except that he admits that the City of Chicago, Illinois, is a terminus of a number of railroads engaged in the transportation of passengers through many of the states of the United States; that some passengers are transported through Chicago by rail; that some passengers leave the trains on which they traveled to Chicago, go to other stations from two city blocks to two miles distant, and board other trains operated by other railroads; and that some passengers use limousine-coaches and trucks operated by Parmelee in transporting themselves and their luggage from one station to another.

5. Denies each and every allegation contained in paragraph "5" of the amended complaint, except that it admits that Parmelee transports some railroad passengers and their luggage between stations in Chicago; that Parmelee is paid by the receiving railroad at the rate of 85¢ for each full fare passenger so transported; and that such passengers receive a Parmelee ticket as part of their railroad ticket.

6. Denies each and every allegation contained in paragraph "6" of the amended complaint, except that he admits that CCM manufactures taxicabs at its factory in Kalamazoo, Michigan, and has shipped some of them to Yellow and Cab Sales in Chicago, Illinois, and to subsidiaries of Parmelee in New York City, Pittsburgh and Minneapolis.

7. Denies each and every allegation contained in paragraph "7" of the amended complaint, except that he admits that some of the taxicabs purchased by Cab Sales, Yellow and subsidiaries of Parmelee, have been manufactured by CCM and shipped from Kalamazoo, Michigan.

104 8 (a). Denies, with respect to paragraph "8" of the amended complaint, the commencement or existence of any conspiracy.

(b). Denies knowledge or information sufficient to form a belief as to any of the allegations contained in paragraph "8(c)" of the amended complaint, except that he admits that in January 1929 Parmelee had not been incorporated and that in January 1929 The Parmelee Company (a corporation dissolved in May 1934) transported passengers between railroad stations in Chicago.

(c). Denies knowledge or information sufficient to form a belief as to any of the allegations contained in paragraph "8(d)" of the amended complaint, except that he admits that in January 1929 Checker held 1,750 taxicab licenses issued by the City of Chicago.

9. Denies each and every allegation contained in paragraph "10" of the amended complaint, except that he admits that prior to 1929 the ordinances of the City of Chicago did not restrict or limit the number of taxicab licenses which might be issued; and that on or about September 25, 1929 the City of Chicago enacted a taxicab ordinance (Municipal Code of Chicago (1931 Ed.) Chap. 41), to which reference is made for its terms.

10. Denies each and every allegation contained in paragraph "11" of the amended complaint, except that he admits that on or about May 18, 1934 the City of Chicago en-

acted a taxicab ordinance (Municipal Code of Chicago, Chapter 195A), to which reference is made for its terms.

11. Denies each and every allegation contained in paragraph "12" of the amended complaint, except that he admits that on or about December 22, 1937 and on or about June 26, 1945 the City of Chicago enacted taxicab
105 ordinances (Municipal Code of Chicago, Chapter 196A), to which reference is made for their terms.

12. Denies each and every allegation contained in paragraph "13" of the amended complaint, except that he admits that in February 1946 the Circuit Court of Cook County entered a decree in the case of Yellow Cab Company against the City of Chicago, *et al.* (No. 46C943), which was affirmed by the Supreme Court of Illinois (396 Ill. 388), to which decree and affirmance reference is made for their terms.

13. Denies each and every allegation contained in paragraph "14" of the amended complaint, except that he admits that in February 1946 and July 1946, 3000 taxicabs licenses issued by the City of Chicago were outstanding, of which 1595 were issued to Yellow, 1000 to Checker which leased them to Cab Sales, and 405 to others; that Parmelee operates limousine-coaches in transporting passengers between railroad stations in Chicago; and except that he denies knowledge or information sufficient to form a belief as to the allegations of said pararaph that there were approximately 1200 unlicensed taxicabs operating in Chicago at the time of filing the amended complaint, whose owners or operators are unable to obtain either regular or temporary taxicab licenses.

14. Denies each and every allegation contained in paragraphs "16", "18", "19" and "20" of the amended complaint.

15. Denies knowledge or information sufficient to form a belief as to any of the allegations contained in paragraph "21" of the amended complaint, except that he admits that Parmelee was incorporated on or about April 12, 1929, and that during April 1929, and that during April 1929, and that during April 1929, CCM purchased 10,000 shares of preferred stock of Parmelee, Ernest H. Miller was elected president and director of Parmelee and two directors of CCM were elected directors of Parmelee.

106 16. Denies each and every allegation contained in paragraph "23" of the amended complaint.

17. Denies each and every allegation contained in paragraph "24" of the amended complaint, except that he ad-

mits that in September 1930, CCM acquired 422,787 shares of common stock of Parmelee and that CCM has since owned more than 51% of the capital stock of Parmelee.

18. Denies the allegations contained in the last sentence of paragraph "25" of the amended complaint, except that he admits that in June 1930 Parmelee acquired the stock of Red Cab Company.

19. Denies each and every allegation contained in paragraph "27" of the amended complaint, except that he admits that in October 1929 DeLuxe Motor Cab Company held about 400 taxicab licenses issued by the City of Chicago; that in October 1929, Markin and Paul C. L'Amoreaux owned or controlled substantially all the stock of DeLuxe; and that in February 1930 General Transportation Company, a wholly owned subsidiary of Parmelee, acquired substantially all the outstanding stock of DeLuxe.

20. Denies each and every allegation contained in paragraph "28" of the amended complaint.

21. Denies each and every allegation contained in paragraph "29" of the amended complaint, except that he admits that in April 1929 Parmelee acquired all the stock of The Transportation Management Corporation, a Delaware corporation; that during April 1929 The Transportation Management Corporation entered into contracts with Yellow, The Parmelee Company and Yellow Taxi Corporation, New York, to which reference is made for their terms; and that Miller was elected a director of Chicago Yellow and of Yellow in May 1929 and held these positions, as well
107 as the presidency of Parmelee and of The Transportation Management Corporation, until 1932.

22. Denies each and every allegation contained in paragraph "30" of the amended complaint, except that he admits that in April 1929 The Transportation Management Corporation entered into contracts with Markin and Miller, to which reference is made for their terms, and that Markin was, between May 1929 and May 1934, advisor for The Transportation Management Corporation, and since May 1934 for Parmelee.

23. Denies the allegations contained in paragraph "31" of the amended complaint that the management functions and contracts of The Transportation Management Corporation were assumed by Parmelee.

24. Denies each and every allegation contained in paragraph "32" of the amended complaint.

25. Denies knowledge or information sufficient to form a belief as to any of the allegations contained in paragraph

"33" of the amended complaint, except that he admits that on or about April 29, 1929 Automotive Sales Corporation and CCM entered into an agreement, to which reference is made for its terms, under which Automotive Sales Corporation obtained for CCM an order from Yellow for 1000 cabs at the price of $1906 per cab, of which Automotive Sales Corporation received a commission of $95.30 per cab.

26. Denies each and every allegation contained in paragraph "34" of the amended complaint, except that he admits that Cab Sales was incorporated on or about January 20, 1930 and that on or about February 8, 1930 CCM, Cab Sales and Checker Taxi Company, an Illinois corporation, entered into an agreement to which reference is made
108 for its terms.

27. Denies each and every allegation contained in paragraph "35" of the amended complaint, except that he admits that in May 1931 Cab Sales borrowed the sum of $500,000 from Benzoline Motor Fuel Company, a wholly owned subsidiary of Chicago Yellow, which had borrowed a like sum from Yellow, and that in May 1931 an agreement was made between Cab Sales and Benzoline for the supply of motor fuel and lubricating oil, to which reference is made for its terms.

28. Denies each and every allegation contained in paragraph "36" of the amended complaint, except that he admits that in 1932 Cab Sales and Benzoline extended the dates of payment of said loan, and that in October 1932 Cab Sales borrowed the sum of $200,000 from The Waverly Corporation which had borrowed the sum of $180,000 from Yellow.

29. Denies each and every allegation contained in paragraph "37" of the amended complaint, except that he admits that from November 1932 until September 1942 Cab Sales continuously owned more than 97% of the capital stock of Checker, and that in September 1942 Cab Sales sold its stock in Checker to the firm of Freimark & Co.

30. Denies each and every allegation contained in paragraphs "39" and "40" of the amended complaint.

31. Denies each and every allegation contained in paragraph "41" of the amended complaint, except that he admits that in 1937 the total number of taxicab licenses issued by the City of Chicago was 4,108, of which 2,165 were issued to Yellow, 1,500 to Checker and 442 to others.

32. Denies each and every allegation contained in paragraphs "42", "43", "44" and "45" of the amended complaint, except that he admits that on or about Janu-

ary 3, 1938 an agreement was made between Yellow and Cab Sales and Checker, to which reference is made for its terms, and that Checker surrendered 500 and Yellow 571 licenses to the City of Chicago.

33. Denies each and every allegation contained in paragraph "46" of the amended complaint.

34. Denies each and every allegation contained in paragraph "47" of the amended complaint, except that he admits that General Transportation Casualty Company was incorporated in 1938 under the laws of the State of New York for the purpose, among other things, of insuring taxicab companies against personal injury and property damage claims; that in 1939 its name was changed to General Transportation Casualty and Surety Co.; that in 1944 its capital was increased; that in 1944 Parmelee purchased stock of General Transportation Casualty and Surety Co.

35. Denies each and every allegation contained in paragraph "48" of the amended complaint, except that he admits that in 1938 Transportation Maintenance Corporation was incorporated under the laws of the State of Illinois, for the purpose of repair and maintenance of motor vehicles.

36. Denies knowledge or information sufficient to form a belief as to any of the allegations contained in paragraphs "49" and "50" of the amended complaint.

37. Denies each and every allegation contained in paragraph "51" of the amended complaint, except that he admits that on or about January 16, 1946 the City Council of the City of Chicago passed a purported resolution, to which reference is made for its terms, and on or about January 22, 1946 the Public Vehicle License Commissioner
110 sent purported notices to Yellow and Checker, to which reference is made for their terms.

38. Denies each and every allegation contained in paragraph "52" of the amended complaint, except that he admits that Yellow commenced a suit (No. 46C943) in the Circuit Court of Cook County, Illinois, in which Checker intervened as a party plaintiff, to which reference is made for the proceedings therein.

39. Denies each and every allegation contained in paragraph "53" of the amended complaint.

Partial Defense

40. To the extent that the amended complaint is based on intrastate commerce, including taxicab services within, and ordinances of, the City of Chicago, Illinois, it fails to state a claim upon which relief can be granted.

41. To the extent that the amended complaint asserts charges, contains allegations and requests relief based on said taxicab services within, and ordinances of, the City of Chicago, Illinois, it fails to comply with the mandate of the Supreme Court of the United States entered in this cause on July 24, 1947.

WHEREFORE the defendant Morris Markin demands judgment dismissing the amended complaint, with the costs and disbursements of this action.

WINSTON, STRAWN AND SHAW
By: CHARLES J. CALDERINI
A Member
Attorneys for the Defendant
Morris Markin

SAMUEL H. KAUFMAN
Samuel H. Kaufman
of Counsel

112 In the District Court of the United States

(Title Omitted.)

Answer of Defendants Yellow Cab Company and Chicago Yellow Cab Company, Inc.—Filed Oct. 6, 1947

The defendants, YELLOW CAB COMPANY and CHICAGO CAB COMPANY, INC., by their attorneys answer the amended complaint in the above entitled action as follows:

1. Answering paragraph 1 of the amended complaint, they deny any violation of the Sherman Act.

2. Answering paragraph 2 of the amended complaint, they deny the allegations that the defendant Chicago Yellow Cab Company, Inc. transacts business within the Eastern Division of the Northern District of Illinois and is found therein.

3. (a) Answering paragraph 3(b) of the amended complaint, they deny that Chicago Yellow Cab Company, Inc. has principal offices at 57 East 21st Street, Chicago, Illinois.

(b) Answering paragraph 3(c) of the amended complaint, they admit that Parmelee Transportation Company is a Delaware corporation with principal offices at 300 North Desplaines Street, Chicago, Illinois and that Parmelee owns 29.5% of the outstanding capital stock of
113 Chicago Yellow; they deny knowledge or information sufficient to form a belief as to the truth of any of the other allegations in said paragraph 3(c).

(c) Answering paragraph 3(d) of the amended complaint, they admit that Checker Cab Manufacturing Corporation is a New Jersey corporation with principal offices

at Kalamazoo, Michigan and that it manufactures and sells cabs; they deny knowledge or information sufficient to form a belief as to the truth of any of the other allegations in said paragraph 3(d).

(d) Answering paragraph 3(e) of the amended complaint, they admit that Cab Sales & Parts Corporation is an Illinois corporation with principal offices at 1401 West Jackson Boulevard, Chicago, Illinois and that it operates "Checker" cabs in Chicago and owns 1.59% of the outstanding stock of Chicago Yellow; they deny knowledge or information sufficient to form a belief as to the truth of any of the other allegations in said paragraph 3(e).

(e) Answering paragraph 3(f) of the amended complaint, they admit that Checker Taxi Company is a Delaware corporation with principal offices at 1401 West Jackson Boulevard, Chicago, Illinois; they deny knowledge or information sufficient to form a belief as to the truth of any of the other allegations in said paragraph 3(f).

(f) Answering paragraph 3(g) of the amended complaint, they admit that Morris Markin is President of CCM and owns .13% of the outstanding stock of Chicago Yellow; they deny knowledge or information sufficient to form a belief as to the truth of any of the other allegations in said paragraph 3(g).

4. Answering paragraph 4 of the amended complaint, they admit that Chicago, Illinois is a terminus of a number of railroads engaged in the transportation of passengers through many of the States of the United States; that some passengers are transported through Chicago by rail; that some passengers leave the trains on which they traveled to Chicago, go to other stations, from two city blocks to
114 two miles distant, and board other trains operated by other railroads; and that some passengers use limousine coaches and trucks operated by Parmelee in transporting themselves and their luggage from one station to another. They deny each and every other allegation contained in said paragraph 4.

5. Answering paragraph 5 of the amended complaint, they deny knowledge or information sufficient to form a belief as to the truth of any of the allegations contained therein.

6. Answering paragraph 6 of the amended complaint, they admit that CCM manufactures taxicabs at its factory in Kalamazoo, Michigan and has shipped some taxicabs to Yellow in Chicago, Illinois; they deny knowledge or information sufficient to form a belief as to the truth of any of the other allegations in said paragraph 6.

7. Answering paragraph 7 of the amended complaint, they deny that Chicago Yellow has ever purchased any taxicabs, but they admit that some of the taxicabs purchased by Yellow have been manufactured by CCM and shipped from Kalamazoo, Michigan; they deny knowledge or information sufficient to form a belief as to the truth of any of the other allegations in said paragraph 7.

8. (a) Answering paragraph 8 of the amended complaint, they deny the commencement or existence of any conspiracy.

(b) Answering paragraph 8(c) of the amended complaint, they admit that in January, 1929 neither the Parmelee Company nor National Transportation Company, Inc. nor Yellow Cab Company of Pittsburgh nor Yellow Taxi Company of Minneapolis owned any stock of Chicago Yellow; they deny knowledge or information sufficient to form a belief as to the truth of any of the other allegations in said paragraph 8(c).

(c) Answering paragraph 8(d) of the amended complaint, they admit that in January, 1929 Checker held 1750 taxicab licenses issued by the City of Chicago; they
115 deny knowledge or information sufficient to form a belief as to the truth of any of the other allegations in said paragraph 8(d).

(d) Answering paragraph 8(e) of the amended complaint, they admit that in January, 1929 CCM did not own any stock of Chicago Yellow; they deny knowledge or information sufficient to form a belief as to the truth of the other allegations in said paragraph 8(e).

(e) Answering paragraph 8(f) of the amended complaint, they deny knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

9. Answering paragraph 9 of the amended complaint, they deny knowledge or information sufficient to form a belief as to the truth of the averment that in 1929 a substantial part of De Luxe Motor Cab Company was owned by Markin.

10. Answering paragraph 10 of the amended complaint, they admit that prior to 1929 the Ordinances of the City of Chicago did not restrict or limit the number of taxicab licenses which might be issued; they further admit that on or about September 25, 1929 the City of Chicago enacted a taxicab ordinance (Municipal Code of Chicago (1931 Ed.) Chap. 41) to which reference is made for its terms. They deny each and every other allegation in said paragraph 10.

11. Answering paragraph 11 of the amended complaint, they admit that on or about May 18, 1934 the City of Chicago enacted a taxicab ordinance (Municipal Code of Chicago, Chap. 195A) to which reference is made for its terms; they deny each and every other allegation in said paragraph 11.

12. Answering paragraph 12 of the amended complaint, they admit that on or about December 22, 1937 and on or about June 26, 1945 the City of Chicago enacted taxicab ordinances (Municipal Code of Chicago, Chap. 196A) to which reference is made for their terms; they deny each and every other allegation in said paragraph 12.

116 13. Answering paragraph 13 of the amended complaint, they admit that in February, 1946 the Circuit Court of Cook County entered a decree in the case of *Yellow Cab Company v. The City of Chicago et al.* (46C943) which was affirmed by the Supreme Court of Illinois (396 Ill. 388) to which decree and affirmance reference is made for their terms; they deny each and every other allegation in said paragraph 13.

14. Answering paragraph 14 of the amended complaint, they admit that in February, 1946 and July, 1946, 3000 taxicab licenses issued by the City of Chicago were outstanding, of which 1595 were issued to Yellow, 1000 to Checker, which leased them to Cab Sales, and 405 to others; they deny knowledge or information sufficient to form a belief as to the truth of any of the allegations in the last two sentences of said paragraph 14; and they deny each and every other allegation in said paragraph 14.

15. Answering paragraphs 15, 16 and 17 of the amended complaint, they deny knowledge or information sufficient to form a belief as to the truth of any of the allegations in said paragraphs.

16. Answering paragraphs 18 and 19 of the amended complaint, they deny each and every allegation in said paragraphs.

17. Answering paragraphs 20 and 21 of the amended complaint, they admit that during April, 1929 Parmelee acquired 106,819 shares of stock of Chicago Yellow and that during June, 1929 Parmelee acquired an additional 8,350 shares of Chicago Yellow; they deny knowledge or information sufficient to form a belief as to the truth of any of the other allegations in said paragraphs 20 and 21.

18. Answering paragraph 22 of the amended complaint, they deny knowledge or information sufficient to form a belief as to the truth of any of the allegations contained therein.

19. Answering paragraph 23 of the amended complaint, they deny each and every allegation contained therein.

117 20. Answering paragraphs 24, 25, 26, 27 and 28 of the amended complaint, they deny knowledge or information sufficient to form a belief as to the truth of any of the allegations contained in said paragraphs.

21. Answering paragraph 29 of the amended complaint, they admit that during April, 1929 the Transportation Management Corporation entered into a contract with Yellow, to which reference is made for its terms, and that Miller was elected a director of Chicago Yellow and of Yellow in May, 1929 and held these positions until 1932; they deny knowledge or information sufficient to form a belief as to the truth of any of the other allegations in said paragraph 29.

22. Answering paragraphs 30, 31 and 32 of the amended complaint, they deny knowledge or information sufficient to form a belief as to the truth of any of the allegations contained therein.

23. Answering paragraph 33 of the amended complaint, they admit that Yellow paid $1906 each for 1000 cabs purchased by it in April, 1929; they deny knowledge or information sufficient to form a belief as to the truth of any of the other allegations in said paragraph 33.

24. Answering paragraph 34 of the amended complaint, they deny knowledge or information sufficient to form a belief as to the truth of any of the allegations contained therein.

25. Answering paragraph 35 of the amended complaint, they admit that in May, 1931 Cab Sales borrowed the sum of $500,000 from Benzoline Motor Fuel Company, a wholly owned subsidiary of Chicago Yellow which had borrowed a like sum from Yellow, and that in May, 1931 an agreement was made between Cab Sales and Benzoline Motor Fuel Company for the supply of motor fuel and lubricating oil to which reference is made for its terms; they deny knowledge or information sufficient to form a belief as to the truth of any of the other allegations in said paragraph 35.

118 26. Answering paragraph 36 of the amended complaint, they admit that in 1932 Cab Sales and Benzoline extended the dates of payment of said loan and that in October, 1932 Cab Sales borrowed the sum of $200,000 from the Waverly Corporation which had borrowed the sum of $180,000 from Yellow; they deny each and every other allegation contained in said paragraph 36.

27. Answering paragraphs 37, 38 and 39 of the amended complaint, they deny knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

28. Answering paragraph 40 of the amended complaint, they deny each and every allegation contained therein.

29. Answering paragraph 41 of the amended complaint, they admit that in 1937 the total number of taxicab licenses issued by the City of Chicago was 4108, of which 2166 were issued to Yellow, 1500 to Checker and 442 to others; they deny each and every other allegation contained in said paragraph 41.

30. Answering paragraphs 42, 43, 44 and 45 of the amended complaint they admit that on or about January 3, 1938 an agreement was made between Yellow and Cab Sales and Checker, to which reference is made for its terms, and that Checker surrendered 500 and Yellow 571 licenses to the City of Chicago; they deny each and every other allegation contained in said paragraphs.

31. Answering paragraph 46 of the amended complaint, they deny each and every allegation contained therein.

32. Answering paragraph 47 of the amended complaint, they admit that General Transportation Casualty Company was incorporated in 1938 under the laws of the State of New York for the purpose, among other things, of insuring taxicab companies against personal injury and property damage claims; they further admit that in 1939 its
119 name was changed to General Transportation Casualty & Surety Company and that in 1944 its capital was increased; they deny each and every other allegation contained in said paragraph 47.

33. Answering paragraph 48 of the amended complaint, they admit that in 1938 Transportation Maintenance Corporation was incorporated under the laws of the State of Illinois for the purpose of repair and maintenance of motor vehicles; they deny each and every other allegation contained in said paragraph 48.

34. Answering paragraph 49 of the amended complaint, they deny the allegations that Yellow knew it would not utilize all of its licenses to operate cabs.

35. Answering paragraph 50 of the amended complaint, they deny knowledge or information sufficient to form a belief as to the truth of any of the allegations contained therein.

36. Answering paragraph 51 of the amended complaint they admit that on or about January 16, 1946 the City

Council of the City of Chicago passed a purported resolution to which reference is made for its terms and that on or about January 22, 1946 the Public Vehicle License Commissioner sent purported notices to Yellow and Checker to which reference is made for their terms; they deny each and every other allegation contained in said paragraph 51.

37. Answering paragraph 52 of the amended complaint, they admit that Yellow commenced a suit (No. 46C943) in the Circuit Court of Cook County, Illinois in which Checker intervened as a party plaintiff, to which reference is made for the proceedings therein; they deny each and every other allegation contained in said paragraph 52.

38. Answering paragraph 53 of the amended complaint, they deny each and every allegation contained therein.

120 PARTIAL DEFENSE

39. To the extent that the amended complaint is based on intrastate commerce, including taxicab services within, and ordinances of, the City of Chicago, Illinois, it fails to state a claim upon which relief can be granted.

40. To the extent that the amended complaint asserts charges, contains allegations and requests relief based on said taxicab services within, or ordinances of, the City of Chicago, Illinois, it fails to comply with the mandate of the Supreme Court of the United States entered in this cause on July 24, 1947.

WHEREFORE the defendants YELLOW CAB COMPANY and CHICAGO YELLOW CAB COMPANY, INC. demand judgment dismissing the amended complaint, with the costs and disbursements of this action.

WEYMOUTH KIRKLAND
Weymouth Kirkland

HOWARD ELLIS
Howard Ellis

A. L. HODSON
A. L. Hodson

JOHN F. FLOBERG
John F. Floberg

Attorneys for the Defendants
Yellow Cab Company and
Chicago Yellow Cab Company, Inc.
33 North La Salle Street,
Chicago 2, Illinois

122 In the District Court of the United States

(Title Omitted.)

Answer of Defendant Parmelee Transportation Company — Filed Oct. 6, 1947

The defendant, Parmelee Transportation Company, by RINGER, REINWALD and SOSTRIN, its attorneys, for its answer to the amended complaint:

1. Denies, with respect to paragraph "1" of the amended complaint, any violation of the Sherman Act.

2. Denies the allegations contained in paragraph "2" of the amended complaint that the defendant Chicago Yellow Cab Company, Inc. transacts business within the Eastern Division of the Northern District of Illinois and is found therein.

3(a). Denies the allegations contained in paragraph "3(b)" of the amended complaint that Chicago Yellow Cab Company, Inc. has principal offices at 57 East 21st Street, Chicago, Illinois.

(b). Denies each and every allegation contained in paragraph "3(c)" of the amended complaint, except that it admits that Parmelee is a Delaware corporation,

123 with principal offices at 300 North Desplaines Street, Chicago, Illinois; that Parmelee operates limousine-coaches and trucks in Chicago to transport passengers and their luggage from one railroad station to another; that Parmelee owns 29.5% of the outstanding stock of Chicago Yellow, 40% of the outstanding stock of General Transportation Casualty and Surety Company, all the outstanding stock of National Transportation Co. Inc., a New York corporation operating cabs in New York, New York, all the outstanding stock of Parmelee System, Inc., a New York corporation, all the outstanding stock of Yellow Cab Company of Pittsburgh, a Pennsylvania corporation operating cabs in Pittsburgh, Pennsylvania (into which Pittsburgh Transportation Company, a Pennsylvania corporation was merged, effective after the close of business December 31, 1946, pursuant to an order made by the Pennsylvania Public Utility Commission on August 21, 1946), and all the outstanding stock of Yellow Taxi Company of Minneapolis, a Minnesota corporation operating cabs in Minneapolis, Minnesota.

(c). Denies the allegations contained in paragraph "3(d)" of the amended complaint that CCM owns 30% of the capital stock of General Transportation Casualty and Surety Company.

(d). Denies knowledge or information sufficient to form a belief as to any of the allegations contained in paragraph "3(e)" of the amended complaint.

(e). Denies knowledge or information sufficient to form a belief as to any of the allegations contained in paragraph "3(f)" of the amended complaint.

(f). Denies knowledge or information sufficient to form a belief as to any of the allegations contained in paragraph "3(g)" of the amended complaint, except that it admits that Markin is president of CCM.

124 4. Denies each and every allegation contained in paragraph "4" of the amended complaint, except that it admits that the City of Chicago, Illinois, is a terminus of a number of railroads engaged in the transportation of passengers through many of the states of the United States; that some passengers are transported through Chicago by rail; that some passengers leave the trains on which they traveled to Chicago, go to other stations, from two city blocks to two miles distant, and board other trains operated by other railroads; and that some passengers use limousine-coaches and trucks operated by Parmelee in transporting themselves and their luggage from one station to another.

5. Denies each and every allegation contained in paragraph "5" of the amended complaint, except that it admits that Parmelee transports some railroad passengers and their luggage between stations in Chicago; that Parmelee is paid by the receiving railroad at the rate of 85¢ for each full fare passenger so transported; and that such passengers receive a Parmelee coupon as part of their railroad ticket.

6. Denies each and every allegation contained in paragraph "6" of the amended complaint, except that it admits that CCM manufactures taxicabs at its factory in Kalamazoo, Michigan, and has shipped some of them to Yellow in Chicago, Illinois and to subsidiaries of Parmelee in New York City, Pittsburgh and Minneapolis.

7. Denies each and every allegation contained in paragraph "7" of the amended complaint, except that it admits that some of the taxicabs purchased by Yellow and subsidiaries of Parmelee, have been manufactured by CCM and shipped from Kalamazoo, Michigan.

8(a). Denies, with respect to paragraph "8" of
125 the amended complaint, the commencement or existence of any conspiracy.

(b). Denies knowledge or information sufficient to form a belief as to any of the allegations contained in paragraph

"8(a)" through "(f)" of the amended complaint, except that it admits that in January 1929 Parmelee had not been incorporated; that in January 1929 The Parmelee Company (a corporation dissolved in May 1934) transported passengers between railroad stations in Chicago; and that in January 1929 neither The Parmelee Company nor any of the present cab operating subsidiaries of Parmelee owned any stock of Chicago Yellow.

9. Denies each and every allegation contained in paragraph "10" of the amended complaint, except that it admits that prior to 1929 the ordinances of the City of Chicago did not restrict or limit the number of taxicab licenses which might be issued; and that on or about September 25, 1929 the City of Chicago enacted a taxicab ordinance (Municipal Code of Chicago (1931 Ed.) Chap. 41), to which reference is made for its terms.

10. Denies each and every allegation contained in paragraph "11" of the amended complaint, except that it admits that on or about May 18, 1934 the City of Chicago enacted a taxicab ordinance (Municipal Code of Chicago, Chapter 195A), to which reference is made for its terms.

11. Denies each and every allegation contained in paragraph "12" of the amended complaint, except that it admits that on or about December 22, 1937 and on or about June 26, 1945 the City of Chicago enacted taxicab ordinances (Municipal Code of Chicago, Chapter 196A), to which reference is made for their terms.

12. Denies each and every allegation contained
126 in paragraph "13" of the amended complaint, except that it admits that in February 1946 the Circuit Court of Cook County entered a decree in the case of Yellow Cab Company against the City of Chicago *et al.* (No. 46C943), which was affirmed by the Supreme Court of Illinois (306 Ill. 388), to which decree and affirmance reference is made for their terms.

13. Denies each and every allegation contained in paragraph "14" of the amended complaint, except that it admits that in February 1946 and July 1946, 3000 taxicab licenses issued by the City of Chicago were outstanding, of which 1595 were issued to Yellow, 1000 to Checker which leased them to Cab Sales, and 405 to others; that Parmelee operates limousine-coaches in transporting passengers between railroad stations in Chicago; and except that it denies knowledge or information sufficient to form a belief as to the allegations of said paragraph that there were approxi-

mately 1,200 unlicensed taxicabs operating in Chicago at the time of filing the amended complaint, whose owners or operators are unable to obtain either regular or temporary taxicab licenses.

14. Denies each and every allegation contained in paragraphs "16," "18" and "19" of the amended complaint.

15. Denies each and every allegation contained in paragraphs "20" and "21" of the amended complaint, except that it admits that Parmelee was incorporated on or about April 12, 1929; that during April 1929 CCM purchased 10,000 shares of preferred stock of Parmelee, Ernest H. Miller was elected president and director of Parmelee, two directors of CCM were elected directors of Parmelee, and Parmelee acquired 106,819 shares of stock of Chicago Yellow, 19,300 shares of stock of The Parmelee Company
127 and 85,659 shares of stock of Yellow Taxi Corporation, New York; that during June 1929 Parmelee acquired an additional 8,350 shares of Chicago Yellow; and that during 1929 Parmelee acquired the remainder of the stock of The Parmelee Company and an additional 22,341 shares of stock of Yellow Taxi Corporation, New York.

16. Denies each and every allegation contained in paragraph "23" of the amended complaint.

17. Denies each and every allegation contained in paragraph "24" of the amended complaint, except that it admits that in September 1930, CCM acquired 422,787 shares of common stock of Parmelee and that CCM has since owned more than 51% of the capital stock of Parmelee.

18. Denies the allegations contained in the last two sentences of paragraph "25" of the amended complaint, except that it admits that it acquired all the outstanding stock of Pittsburgh Transportation Company in October, 1929, and thereafter continuously owned said stock until merger of Pittsburgh Transportation Company into Yellow Cab Company of Pittsburgh, which became effective after the close of business on December 31, 1946, and that it acquired stock of Red Cab Company in June 1930.

19. Denies each and every allegation contained in paragraph "27" of the amended complaint, except that it admits that in October 1929 DeLuxe Motor Cab Company held about 400 taxicab licenses issued by the City of Chicago; that in October 1929, Markin and Paul C. L'Amoreaux owned or controlled substantially all the stock of DeLuxe; and that in February 1930 General Transportation Com-

pany, a wholly owned subsidiary of Parmelee, acquired substantially all the outstanding stock of DeLuxe.

20. Denies each and every allegation contained
128 in paragraph "28" of the amended complaint.

21. Denies each and every allegation contained in paragraph "29" of the amended complaint, except that it admits that in April 1929 Parmelee acquired all the stock of the Transportation Management Corporation, a Delaware corporation; that during April 1929 The Transportation Management Corporation entered into contracts with Yellow, The Parmelee Company and Yellow Taxi Corporation, New York, to which reference is made for their terms; and that Miller was elected a director of Chicago Yellow and of Yellow in May 1929 and held these positions, as well as the presidency of Parmelee and of The Transportation Management Corporation, until 1932.

22. Denies each and every allegation contained in paragraph "30" of the amended complaint, except that it admits that in April 1929 The Transportation Management Corporation entered into contracts with Markin and Miller, to which reference is made for their terms, and that Markin was, between May 1929 and May 1934, advisor for The Transportation Management Corporation, and since May 1934 for Parmelee.

23. Denies the allegations contained in paragraph "31" of the amended complaint that the management functions and contracts of The Transportation Management Corporation were assumed by Parmelee.

24. Denies each and every allegation contained in paragraph "32" of the amended complaint.

25. Denies each and every allegation contained in paragraph "33" of the amended complaint, except that it admits that Automotive Sales Corporation was incorporated in Delaware on or about April 20, 1929; that on or about April 23, 1929 all of its stock was purchased by
129 Parmelee; that on or about April 29, 1929 Automotive Sales Corporation and CCM entered into an agreement, to which reference is made for its terms, under which Automotive Sales Corporation obtained for CCM an order from Yellow for 1,000 cabs at the price of $1,906 per cab, of which Automotive Sales Corporation received a commission of $95.30 per cab.

26. Denies knowledge or information sufficient to form a belief as to any of the allegations contained in paragraphs "34", "35", "36", "37", "38" and "39" of the amended complaint.

27. Denies each and every allegation contained in paragraph "40" of the amended complaint.

28. Denies each and every allegation contained in paragraph "41" of the amended complaint except that it admits that in 1937 the total number of taxicab licenses issued by the City of Chicago was 4,108, of which 2,166 were issued to Yellow, 1,500 to Checker and 442 to others.

29. Denies each and every allegation contained in paragraphs "42", "43", "44" and "45" of the amended complaint, except that it admits that on or about January 3, 1938 an agreement was made between Yellow and Cab Sales and Checker, to which reference is made for its terms, and that Checker surrendered 500 and Yellow 571 licenses to the City of Chicago.

30. Denies each and every allegation contained in paragraph "46" of the amended complaint.

31. Denies each and every allegation contained in paragraph "47" of the amended complaint, except that it admits that General Transportation Casualty Company was incorporated in 1938 under the laws of the State of New York for the purpose, among other things, of insuring taxicab companies against personal injury and property damage claim; that in 1939 its name was changed to General Transportation Casualty and Surety Co.; that in 1944 its capital was increased; that in 1944 Parmelee purchased stock of General Transportation Casualty and Surety Co.

32. Denies each and every allegation contained in paragraph "48" of the amended complaint, except that it admits that in 1938 Transportation Maintenance Corporation was incorporated under the laws of the State of Illinois, for the purpose of repair and maintenance of motor vehicles.

33. Denies knowledge or information sufficient to form a belief as to any of the allegations contained in paragraphs "49", "50", "51" and "52" of the amended complaint.

34. Denies each and every allegation contained in paragraph "53" of the amended complaint.

Partial Defense

35. To the extent that the amended complaint is based on intrastate commerce, including taxicab services within, and ordinances of, the City of Chicago, Illinois, it fails to state a claim upon which relief can be granted.

36. To the extent that the amended complaint asserts charges, contains allegations and requests relief based on said taxicab services within, and ordinances of, the City of Chicago, Illinois, it fails to comply with the mandate of the Supreme Court of the United States entered in this cause on July 24, 1947.

WHEREFORE the defendant Parmelee Transportation Company demands judgment dismissing the amended complaint, with the costs and disbursements of this action.

RINGER, REINWALD AND SOSTRIN
By: PHILIP E. RINGER
A Member
Attorneys for the defendant
Parmelee Transportation Company

204 In the United States District Court
for the Northern District of Illinois,
Eastern Division

No. 46 C 1339

UNITED STATES OF AMERICA, PLAINTIFF
v.
YELLOW CAB COMPANY; CHICAGO YELLOW CAB COMPANY, INC.; PARMELEE TRANSPORTATION COMPANY; CAB SALES AND PARTS CORPORATION; CHECKER TAXI COMPANY; CAB MANUFACTURING CORPORATION; AND MORRIS MARKIN, DEFENDANTS

Opinion—Filed Nov. 1, 1948

The amended complaint in this action alleges that the defendants, commencing in early 1929, conspired in violation of Sections 1 and 2 of the Sherman Anti-Trust Act (26 Stat. 209, as amended) to restrain and monopolize interstate commerce in (1) the sale of motor vehicles for use as cabs to the principal cab operating companies in Chicago, New York City, Pittsburgh and Minneapolis, and (2) the transportation of railroad passengers and their luggage between railroad stations in Chicago pursuant to contractual arrangements with railroads and railroad associations.

205 The original complaint additionally alleged that such conspiracy extended to the business of furnishing taxicab services for hire in Chicago, but this was deleted after decision by the Supreme Court that such taxicab services were local and not interstate commerce

and that in this respect the original complaint failed as a matter of pleading to state a claim for relief. *United States v. Yellow Cab Co.*, 332 U. S. 218.

The defendant Checker Cab Manufacturing Corporation (CCM) manufactures taxicabs in Michigan and sells them to purchasers in various states. The defendant Yellow Cab Company (Yellow), all of whose stock is owned by the defendant Chicago Yellow Cab Company, Inc. (Chicago Yellow), operates taxicabs in Chicago. The defendant Cab Sales and Parts Corporation (Cab Sales) also operates taxicabs in Chicago under licenses leased from Checker Taxi Company, (Checker). The defendant Parmelee Transportation Company (Parmelee) owns all the stock of three subsidiaries which respectively operate taxicabs in New York City, Pittsburgh and Minneapolis. Parmelee also has contractual arrangements with railroads and railroad associations under which it transports railroad passengers and their luggage between railroad stations in Chicago. The defendant Morris Markin (Markin) is the president and general Manager of CCM. CCM was first incorporated in 1922 and has ever since manufactured a purpose-built cab. In 1923 its stock was publicly issued and in 1928 a second public issue was effected through the underwriting firm of J. A. Sisto & Co. Markin, in 1928, was the general manager and president of CCM, and CCM, in 1928, produced its Model K cab which received widespread acclaim.

206 In 1928 Ernest H. Miller, president of Yellow Taxi Corporation, New York, which operated "Yellow" cabs in New York City, initiated negotiations which led to Parmelee's formation. These negotiations, commencing in 1925, took place against a background of voluntary withdrawal by substantial interests of the "Yellow" organization in Chicago.

The Yellow organization in Chicago traces back to 1910. In 1925 its components included Yellow, Chicago Yellow and Yellow Cab Manufacturing Company, the last of which manufactured the "Yellow" purpose-built cab and supplied Yellow's cab requirements. In 1925, Yellow Cab Manufacturing Company was sold to General Motors Corporation, and shortly afterwards its name was changed, its plant was transferred, and it began to engage principally in the business of bus and truck manufacture.

In 1928 Miller informed Markin that persons owning substantial interests in Yellow Taxi Corporation, New

York and Chicago Yellow desired to sell those interests. Miller asked Markin whether Markin could aid in arranging financing for such purpose. Markin consulted J. S. Sisto & Co., the underwriters through whom CCM earlier in 1928 had effected its public issue of stock. Negotiations ensued among Miller, Charles A. McCulloch, vice-president of Chicago Yellow and chairman of the board of The Parmelee Company, Markin, and J. S. Sisto & Co. in connection with which McCulloch also offered for sale stock of The Parmelee Company. J. A. Sisto & Co. investigated the proposed purchase, arranged for its financing and evolved the financial and operating structure of Parmelee.

207 Parmelee was formed April 12, 1929, with a capitalization of $10,600.000 consisting of $5,000.000 of debentures, $1,000,000 of preferred shares, and 250,000 common shares of the value of $4,600,000. Only the common shares possessed voting power. The $5,000,000 of debentures and the 250,000 common shares were publicly issued through J. A. Sisto & Co. and White Weld & Co. as underwriters. The $1,000,000 of preferred shares were purchased by CCM.

Shortly after its formation, Parmelee acquired 26 per cent of the stock of Chicago Yellow, 68 percent of the stock of Yellow Taxi Corporation, New York, and 96 per cent of the stock of The Parmelee Company.

In connection with Parmelee's formation and the preceding negotiations, Markin, aside from discussions concerning CCM's purchase of Parmelee's preferred shares, acted in his personal capacity. Markin personally bought for himself and an associate 6 per cent of Parmelee's common shares. He also entered into an employment contract with Transportation Management Corporation, a newly formed and wholly owned subsidiary of Parmelee, to act as an adviser to Miller, president of Transportation Management Corporation. Markin's salary as such adviser was $25,000 per year and Miller's salary as such president was $50,000 per year. Prior to his subscription to Parmelee's common shares and to his employment contract with Transportation Management Corporation, Markin disclosed his personal negotiations to CCM, both at director and stockholder meeting, and requested a modification of his employment contract with CCM, under

208 which he was required to devote his whole time to CCM's business, so that he might enter into this em-

ployment contract with Transportation Management Corporation. CCM recognized that Markin was acting in his personal capacity, and modified Markin's employment contract with itself to permit Markin to enter into this employment contract with Transportation Management Corporation.

In purchasing the $1,000,000 of Parmelee preferred shares, CCM hoped to receive, in addition to a profitable investment, the continuing good will of Parmelee as a potential customer for cabs. CCM declined, however, a prior offer to purchase common voting shares of Parmelee rather than the non-voting preferred shares because CCM desired the safer investment.

At Parmelee's formation, Markin was neither an officer nor a director of Parmelee or any of its affiliates; nor did Markin or CCM possess any control over Parmelee or its affiliates or any of their officers or directors.

During 1929 after Parmelee's formation both Yellow and Yellow Taxi Corporation, New York, purchased Model K cabs from CCM. No agreements, express or implied, were made, however, between CCM and Parmelee or any of Parmelee's affiliates for the exclusive or continuous purchase of CCM cabs; the 1929 purchases by Yellow and Yellow Taxi Corporation, New York, were limited to a specified number delivered that year.

Subsequent to Parmelee's acquisition of stock of Yellow Taxi Corporation, New York, and Chicago Yellow, Parmelee acquired the stock of two Pittsburgh taxicab operating companies, and later organized as a
209 wholly owned subsidiary a Minneapolis taxicab operating company. These Pittsburgh acquisitions occurred in 1929 and neither Markin nor CCM participated in them. The organization of the Minneapolis taxicab operating company occurred in 1931 and followed the receivership of a prior Minneapolis taxicab operating company owned by a local street railway company. Parmelee supplied $16,305 to purchase the receivership assets which subsequently were transferred to the Minneapolis corporation organized by Parmelee.

From the evidence the court finds that in 1929 neither CCM nor Markin possessed the power to compel Parmelee or any of its affiliates to purchase only CCM cabs; that in 1929 neither CCM, Markin nor any of the defendants formed an intent or plan to compel Parmelee or any of its cab operating affiliates to purchase only CCM cabs, and that in

1929 neither CCM, Markin nor any of the defendants formed an intent or plan to control commerce in the sales of cabs in any city or place.

At the time of Parmelee's formation Markin owned 12 per cent of CCM's stock and possessed no control over CCM's directorate. By mid-1930 Markin's ownership of CCM stock declined to 5 per cent, and of Parmelee's common stock to less than 1 per cent. At that time, CCM's largest stockholder was a group represented by John J. Raskob and Pierre duPont which owned more than 34 per cent of CCM's stock. This group and later duPont interests continued until mid-1933 to be CCM's largest stockholders. For several years thereafter representatives of Cord Corporation constituted the majority of CCM's directors. During none of this period was Markin in control of CCM.

210 In 1930 the following events occurred. J. A. Sisto & Co. was in financial difficulties as a result of the stock market crash of October 1929 and subsequent depression, and continued to hold without likelihood of public sale, $1,442,000 of the Parmelee debentures plus some Parmelee common shares and warrants. It sold these securities to CCM. Parmelee was incurring substantial losses, partly because of business conditions and partly because of a severe strike in Pittsburgh. Markin personally owned substantially all the stock of Motor Cab Transportation Corporation which he had previously formed and whose subsidiaries operated a large fleet of CCM cabs in New York City. The Raskob-duPont group requested that Markin dispose of his Motor Cab stock so that he would not be, through this corporation, in competition with other New York City customers of CCM. Parmelee suggested that its financial strain would be eased if the $1,442,000 of debentures and the $1,000,000 of preferred shares of Parmelee then owned by CCM, carrying a current burden of interest charges, sinking fund requirements and cumulative preferred dividends aggregating over $330,000 yearly, were exchanged for Parmelee common shares. As a result of ensuing negotiations Markin, on the insistence of the Raskob-duPont group, transferred his Motor Cab stock to CCM in exchange for shares of CCM, and CCM transferred this Motor Cab stock plus all CCM's holdings of Parmelee debentures and preferred stock plus some incidental securities, to Parmelee in exchange for 422,787 Parmelee common stock. In consequence of this transac-

tion, CCM in the latter part of 1930 became the
211 owner of a majority of Parmelee's common stock.
This transaction, however, was not related to any sales of CCM cabs to Parmelee or any of its taxicab operating affiliates and no accompanying intent or plan connected with any control over commerce in the sales of cabs existed on the part of any of the defendants.

At the present time, CCM owns 61.75 per cent of the stock of Parmelee, and Parmelee owns 29.5 per cent of the stock of Chicago Yellow and all the stock of three subsidiaries which respectively operate cabs in New York City, Pittsburgh and Minneapolis. Yellow, whose parent is Chicago Yellow, presently operates 1,595 licensed cabs out of 3,000 licensed and 950 temporarily licensed cabs in Chicago, or 1,595 out of an aggregate of 3,950. One of Parmelee's cab operating subsidiaries presently operates 1,932 licensed cabs out of 11,814 licensed cabs in New York City; another presently operates 485 licensed cabs out or 690 licensed cabs in Pittsburgh; and the third presently operates 125 licensed cabs out of 214 licensed cabs in Minneapolis.

Checker was formed in 1919 by a group of taxicab drivers who became its stockholders and operated their cabs under its common name. Checker performed services for these driver-stockholders, including telephone, cab stand, garage, repairs, insurance and the like, for which it received service payments. Orders from Checked for CCM cabs were among CCM's first orders in 1922. In 1925 a five year contract was made between CCM and Checker for the exclusive supply by CCM of Checker's requirements of cabs. Disputes occurred, however, with respect to this contract. These disputes were finally settled
212 in 1930, after findings by a Special Master in CCM's favor, by the substitution of a new five year exclusive contract expiring in 1935.

Cab Sales was formed in 1930 as a method of compensating Paul C. L'Amoreaux, CCM's attorney in the CCM-Checker litigation. He became Cab Sales' sole stockholder and Cab Sales became entitled to receive a commission on CCM Sales to Checker during the substituted five year contract. In 1931 Checker's president desired to withdraw from Checker and suggested the sale to Cab Sales of the majority of Checker's stock. Cab Sales thought this a good purchase and obtained for this purpose a substantial sum

from Markin personally and loans from subsidiaries of Yellow. Numerous business factors unrelated to sales of cabs and turbulent cab operating conditions in Chicago motivated this investment by Markin and these loans by subsidiaries of Yellow. Between 1931 and 1935 Checker continued its previous form of individual-driver operation. During this period, however, large arrearages accumulated in the service charges owing by the drivers and the drivers also defaulted on purchase installments of their cabs with the result that cabs were abandoned or Cab Sales was required to repossess them. In 1935 Cab Sales commenced fleet operation of 500 cabs within Checker. This was a minority of the total number of cabs operated within Checker but Cab Sales operated these 500 cabs as a fleet while the individual drivers of Checker operated their cabs individually. Between 1935 and 1941 the individual drivers gradually dropped out as a result of their difficulties of operation and their inability or unwillingness to pay their service charges and purchase installments on cabs,
213 so that by 1941 all "Checker" cabs were operated as a fleet by Cab Sales.

L'Amoreaux died in 1933 and since 1934 Markin has been the owner of substantially all the stock of Cab Sales. Since 1942 substantially all the stock of Checker has been owned by associates of Markin.

From the evidence, the court finds that Cab Sales did not acquire Checker's stock to compel the purchase of CCM cabs by Checker drivers or to control commerce in the sales of cabs to Chicago or elsewhere; and that the transition in Checker to a fleet operation was in adaptation to the difficulties confronting its individual-driver operation, and was not part of any intent or plan of any of the defendants to compel purchases of CCM cabs or to control commerce in the sales of cabs to Chicago or elsewhere.

At the present time Cab Sales operates 1,000 licensed cabs out of the aggregate of 3,950 licensed and temporarily licensed cabs in Chicago.

During the period 1929 through 1942 the cab operating companies affiliated with Parmelee, and Cab Sales have generally purchased only CCM cabs; between 1942 and 1947 CCM was engaged in war production and reconversion from war production and sold no cabs. In 1947 all the Parmelee cab operating affiliates, except in New York City, and Cab Sales replaced their fleets with pleasure cars

manufactured by General Motors Corporation, Ford or Chrysler Corporation.

During the period 1922 through 1928 CCM manufactured and sold an aggregate of 8,019 cabs or an average of 1,336 cabs per year. During the period 1929 through 1942 CCM manufactured and sold an aggregate of 20,260 cabs
214 or an average of 2,090 cabs per year. CCM's pre-1929 customers included all present cab operating companies under consideration in this action or one or more of their predecessors, except Yellow. Of the 29,260 cabs manufactured and sold between 1929 and 1942, 16,996 were sold to cab operating companies named in this action and 12,264 were sold to others.

The annual average number of taxicabs operated in the United States since 1928 is estimated at approximately 85,000. The bulk of these are manufactured by General Motors Corporation, Ford and Chrysler Corporation. The CCM cab has always been a purpose-built cab. The vehicles used as cabs which are produced by the large automotive manufacturers have generally been pleasure cars converted or adapted to use as taxicabs. A purpose-built cab is a vehicle built for the purpose of use as a taxicab; its essential characteristics are safety, assembly of parts in such manner as to afford low maintenance cost, driver appeal, and passenger appeal. During the period 1928 through 1942 CCM was the only manufacturerer continuously engaged in the production of purpose-built cabs. The business judgment of Checker, Yellow and the cab operating subsidiaries of Parmelee has been that the CCM purpose-built cab better served their large city needs than converted pleasure cars.

Municipal regulation of taxicabs prevails throughout most of the large cities of the United States. In most of these large cities cab operations are conducted through fleets rather than as individual driver operations and in most a large proportion of the cab licenses are held by one or two operating companies. These fleet operations generally utilize a uniform cab and replacements are
215 commonly obtained from the same manufacturer.

In Chicago taxicabs are regulated by ordinances of the City of Chicago. These ordinances control the physical requirements of the taxicabs and also establish and control the rates. Municipal regulations likewise control taxicabs and rates in the cities of New York, Pittsburgh and Minneapolis.

On May 9, 1853 Frank Parmelee formed the firm of Frank Parmelee & Company to specialize in the transfer by coaches of railroad passengers and their luggage between railroad stations in Chicago; in 1919 this firm became known as The Parmelee Company. Arrangements for such transfer service have existed continuously since 1853 between Parmelee or its predecessors and the railroads or railroad associations.

In the conduct of this inter-station transfer business Parmelee operates limousine coaches for passengers, trucks for luggage, and collects its compensation from the railroads. Passengers surrender to Parmelee coupons attached to their railroad tickets and furnished to them when they buy such railroad tickets. Their checked luggage is transported separately by Parmelee on trucks. Parmelee's routes between Chicago railroad stations are fixed. Its limousine coaches cannot be hired separately by any one person and passengers can travel only between railroad stations. Parmelee has offices at the several stations and its personnel is established and trained. Parmelee does not operate taxicabs for the general public in Chicago and is not subject to the taxicab ordinances of the City of Chicago.

Yellow, Checker and Cab Sales, however, have engaged only in the business of furnishing taxicab services
216 for hire to the general Chicago public and their operations are subject to the ordinances of the City of Chicago. As part of their taxicab services for the general Chicago public, Yellow and Cab Sales furnish cab services to and from Chicago railroad stations. None of them has or has ever had limousine coaches or trucks or the type of personnel used by Parmelee and has never engaged in the kind of service rendered by Parmelee under its contractual arrangement with railroads and railroad associations.

On the evidence the court finds that the differences between these cab operating companies and Parmelee in equipment, personnel and services are such that competition with Parmelee for such contractual arrangements with railroads or railroad associations would be impractical and unlikely; that neither Yellow, Checker nor Cab Sales has ever agreed, expressly or impliedly, not to compete with Parmelee or not to engage in such interstation transfer business; and that none of the defendants has ever, expressly or impliedly, forbidden Yellow, Checker or Cab Sales to compete with Parmelee or to engage in such interstation transfer business.

In respect of sales of taxicabs the theory of the Government is that the defendants deliberately and calculatedly purchase control of taxicab operating companies in four cities in order to monopolize and restrain interstate sales of cabs to those cities. In considering the complaint as a matter of pleading the Supreme Court, *United States v. Yellow Cab Co.*, 332 U. S. 218, 227, thus stated this theory:

> "The theory of the complaint, to borrow language
> 217 from United States v. Reading Co., 253 U. S. 26, 57, is that 'dominating power' over the cab operating companies 'was not obtained by normal expansion to meet the demands of a business growing as a result of superior and enterprising management, but by deliberate, calculated purchase for control.' If that theory is borne out in this case by the evidence, coupled with proof of an undue restraint of interstate trade, a plain violation of the Act has occurred."

Later, in *United States v. Columbia Steel Co.*, 334 U. S. 495, 522, the Supreme Court said in reference to its decision in the *Yellow Cab* case:

> "In the complaint the Government charged that the defendants had combined and conspired to effect the restraints in question with the intent and purpose of monopolizing the cab business in certain cities, and no motion to dismiss that allegation was accepted as true."

The evidence adduced at the trial consisted of voluminous documents as well as oral testimony. On consideration of the evidence as a whole it appears to the court that the Government's theory is not borne out by the proof.

From the evidence it appears to the court that the stock relationships which developed among the defendants were not part of a design to compel the purchase of CCM cabs and were not accompanied by an intent to control commerce in the sales of cabs to any of the four cities under consideration. The affiliations which occurred were occasioned by other business factors. Thus without re-
218 viewing each instance, the status of Parmelee, which is the pivot of the Government's theory, may be considered. At Parmelee's formation in April 1929, CCM not only was without any control over Parmelee but actually refused the opportunity to take common shares of Parmelee which possessed voting power, and took instead non-voting preferred shares of Parmelee. CCM's later acquisition, in the latter part of 1930, of a majority of Parmelee's common shares was the result of a series of

supervening factors consequent on the stock market crash of October 1929, none of which could reasonably have been foreseen at Parmelee's formation and none of which was connected with sales of cabs by CCM to cab operating affiliates of Parmelee. During the entire depression period conditions of financial stress continuously beset cab operating companies in general and Parmelee in particular. cf. *International Shoe Co. v. Federal Trade Commission*, 280 U. S. 291, 301. Nor did Markin possess any control over Parmelee or CCM. In the latter part of 1930 Markin's ownership of Parmelee shares declined to less than 1 per cent and his ownership of CCM shares to 5 per cent, which contrasts with an ownership of CCM shares of more than 34 per cent by the Raskob-duPont group. Raskob and duPont interests in CCM continued until 1933 and commencing in 1933 and continuing for several years afterwards Cord Corporation controlled CCM's management.

Since, on the proof, the stock relationships of the defendants did not arise as a result of a "deliberate, calculated purchase for control" over commerce in the sales of cabs, the affiliation of the defendants does not constitute a violation of the Sherman Act. *United States v. Yellow*
218-A *Cab Co., supra*, 227; *United States v. Paramount Pictures, Inc.*; *United States v. Columbia Steel Co., supra.*

Nor, on the evidence as a whole, does the proof show that the purchases of CCM's purpose-built cabs were made under compulsion or, except for the five year and substituted five year agreements between CCM and Checker expiring in 1935, under exclusive contracts. Included in the proof to the contrary are the sale to General Motors Corporation in 1925 of Yellow Cab Manufacturing Co. which manufactured the "Yellow" purpose-built cab, and the subsequent devotion of that company principally to the production of trucks and busses; the acclaim accorded in 1928 and 1929 to CCM's Model K cab; the practice even before 1929 of many of the cab operating companies under consideration or their predecessors of buying only purpose-built cabs; the status of CCM during the period since 1929 as the only manufacturer which continuously produced purpose-built cabs; and the tendency of cab operating companies usually to replace their fleets with cabs of the same manufacture. The government has suggested that pleasure cars, rather than purpose-built cabs should, perhaps, have been bought by the cab operating companies under consideration. This, however, is within the area of

business judgment and, on the evidence it appears that the business judgment of these cab operating companies was that the CMM purpose-built cabs better served their large city needs than converted pleasure cars. In *Yellow Cab Co. v. City of Chicago*, 396 Ill. 388, the Illinois Supreme Court thus referred to some of the advantages of operation in the City of Chicago of purpose-built cabs: (page 395)

218-B "It further appears that there are certain advantages to the operation of taxicabs of special construction since they have many specially designed features for the safety, convenience and enjoyment of the passengers, and for easier operation on the public streets. Certain of these features are extra heavy frames, specially constructed bodies, specially designed brakes and steering mechanism, finger guards on door hinges, specially padded partitions, specially designed wheels, tires, ventilators and other features. Their weight is approximately 1000 pounds more than the average passenger car."

The evidence in the present case amply sustains the right of the cab operating companies under consideration to determine, as a matter of business judgment, that the CCM purpose-built cab best suits their large city needs. This business judgment should not, on the evidence, be disturbed by the court. Under these business circumstances, it appears both reasonable and natural for these cab operating companies to buy the purpose-built cab produced by its affiliate.

In *United States v. Columbia Steel Co., supra*, 523, the Supreme Court said:

"Nothing in the Yellow Cab case supports the theory that all exclusive dealing arrangements are illegal *per se*.

"A subsidiary will in all probability deal only with its parent for goods the parent can furnish. That fact, however, does not make the acquisition invalid."

218-C The evidence does not disclose any unreasonable restraint. An additional factor affecting any question of unreasonable restraint is the control by the four cities concerned through existing municipal regulations over the issuance of taxicab licenses, the physical specifications of taxicabs, and the rates of fare.

In respect of Parmelee's contractual arrangements with the railroads and railroad associations for inter-station transfer of railroad passengers and their luggage, the

Government alleges that the defendants agreed that Yellow, Checker and Cab Sales would not compete with Parmelee for such contracts. No adequate proof supports this charge nor is it shown that the defendants ever forbade Yellow, Checker or Cab Sales, expressly, or impliedly, from competing with Parmelee. Nor, in view of the evidence to the contrary, does any inference of an agreement of non-competition arise from Parmelee's continued contractual arrangements with the railroads and railroad associations after 1929. The historical relationship and the contractual arrangements of Parmelee and its predecessors with the railroads and railroad associations have been continuous for nearly a century. Exclusive contract arrangements have been sustained as valid. *Donovan v. Pennsylvania Company*, 199 U. S. 279; *United States v. Yellow Cab Company, supra*, 229. For years prior to 1929 the year of the commencement of the alleged conspiracy, Yellow and Checker operated taxicabs in Chicago without attempting to compete for such contracts with the railroads or railroad associations. Yellow and Cab Sales furnish taxicab serv-
218-D ices for hire to the general Chicago public. Their equipment, personnel and services adapted to this business differ from Parmelee's to such an extent that it would be "impractical and unlikely" for them to compete with Parmelee for its inter-station transfer business. *United States v. Yellow Cab Co., supra*, 229.

In arriving at the findings of fact made above this court has considered the various matters of proof presented; those not specifically mentioned in the findings have been deemed intermediate in the process of ascertaining the ultimate facts. Included in this category, for example is the 1937 ordinance of the City of Chicago, under which the number of outstanding taxicab licenses in Chicago was reduced to 3,000. This ordinance, as its preamble recites, was plainly the result of a determination of public convenience and necessity and the surrenders of licenses by Yellow and Checker in pursuance of this ordinance have, under the proof, no relation to any problems of sales of CCM cabs or inter-station transfer by Parmelee.

The court finds that the defendants have not combined or conspired to restrain or monopolize, and no unreasonable restraint or any monopolization was effected by any of them, and that they have not restrained or monopolized interstate commerce either in the sale of motor vehicles for use as cabs to the principal cab operating companies in Chicago, New York City, Pittsburgh or Minneapolis or

in the transportation of railroad passengers and their luggage between railroad stations in Chicago pursuant to contractual arrangements with railroads or railroad association.

218-E Counsel will submit an order in accordance herewith.

WALTER J. LA BUY
Judge
United States District Court

November 1, 1948.

219 In the United States District Court
(Title Omitted)

Stipulation Restoring Notice Filed Nov. 10, 1948—Filed Feb. 10, 1949.

It is hereby stipulated and agreed by and between the parties hereto, by their respective counsel, that attached hereto is a true and correct copy of a certain notice filed with the Clerk of the United States District Court on November 10, 1948.

It is further stipulated that said copy attached hereto may be treated by the Clerk of said Court as the original of said notice filed on said date.

Dated: February 8, 1949.

WILLIS L. HOTCHKISS
Special Assistant to the Attorney General, Attorney for Plaintiff United States of America

WINSTON STRAWN SHAW & BLACK
AND GALLOP CLIMENKO GOULD & LYNTON
Attorneys for Defendants, Checker Cab Manufacturing Corporation and Morris Markin

220 KIRKLAND FLEMING GREEN MARTIN & ELLIS
Attorneys for Defendants Yellow Cab Company and Chicago Yellow Cab Company, Inc.

RINGER REINWALD & SOSTRIN
Attorneys for Defendant Parmelee Transportation Company

JESMER & JESMER
Attorneys for Defendants Checker Taxi Company and Cab Sales and Parts Corp.

221 In the United States District Court
For the Northern District of Illinois
Eastern Division

No. 46 C 1339

UNITED STATES OF AMERICA, PLAINTIFF,
v.
YELLOW CAB COMPANY, CHICAGO YELLOW CAB COMPANY, INC., PARMELEE TRANSPORTATION COMPANY, CAB SALES AND PARTS CORPORATION, CHECKER TAXI COMPANY, CHECKER CAB MANUFACTURING CORPORATION, AND MORRIS MARKIN, DEFENDANTS.

SIRS:

PLEASE TAKE NOTICE that within is the proposed order and judgment which will be presented to the Court on November 10, 1948, at 10 o'clock in the forenoon for signature and entry.

GALLOP, CLIMENKO, GOULD & LYNTON
and WINSTON, STRAWN & SHAW
Attorneys for Defendants
Checker Cab Manufacturing
Corporation and Morris Markin

KIRKLAND, FLEMING, GREEN, MARTIN & ELLIS
Attorneys for Defendants
Yellow Cab Company and Chicago
Yellow Cab Company, Inc

RINGER, REINWALD & SOSTRIN
Attorneys for Defendant
Parmelee Transportation Company

JESMER & JESMER
Attorneys for Defendants
Checker Taxi Company and Cab Sales
and Parts Corp.

To:
MELVILLE C. WILLIAMS, ESQ.
Special Assistant to the Attorney General
Attorney for Plaintiff
United States of America

The plaintiff does not object to the form of the within order and judgment presented by the defendants to the Court for signature and entry.

Sgd.) MELVILLE C. WILLIAMS

Chicago, Illinois, November 9, 1948.

223 In the United States District Court
For the Northern District of Illinois
Eastern Division

No. 46 C 1339

UNITED STATES OF AMERICA, PLAINTIFF,
v.
YELLOW CAB COMPANY, CHICAGO YELLOW CAB COMPANY, INC., PARMELEE TRANSPORTATION COMPANY, CAB SALES AND PARTS CORPORATION, CHECKER TAXI COMPANY, CHECKER CAB MANUFACTURING CORPORATION, AND MORRIS MARKIN, DEFENDANTS.

Order and Judgment—Filed Nov. 10, 1948.

This action having been tried upon the facts by the Court without a jury, and, after consideration, the Court having rendered its opinion from which appear its findings of fact and conclusions of law, it is hereby

ORDERED that the opinion of the Court, filed herein November 1, 1948, constitute the Court's findings of fact and conclusions of law in this action, pursuant to Rule 52 of the Rules of Civil Procedure; and it is hereby

ORDERED, ADJUDGED AND DECREED that this action be and it hereby is dismissed on the merits.

WALTER J. LABUY
United States District Judge

Chicago, Illinois, November 10, 1948.

225 In the United States District Court

(Title Omitted)

Petition for Appeal—Filed Jan. 7, 1949

The United States of America, plaintiff in the above-entitled cause, considering itself aggrieved by the final decree of this Court entered on the tenth day of November, 1948, does hereby pray an appeal from said final decree to the Supreme Court of the United States. Pursuant to Rule 12 of the Rules of the Supreme Court, the plaintiff presents to this Court herewith a statement showing the basis of jurisdiction of the Supreme Court to entertain an appeal in this cause.

The particulars wherein the plaintiff considers the order erroneous are set forth in the assignment of errors and prayer for reversal accompanying this petition and to which reference is hereby made.

The plaintiff prays that its appeal may be allowed and that citation be issued as provided by law, and that a transcript of the records, proceedings, and documents upon which said final decree was based, duly authenticated, be sent to the Supreme Court of the United States under the rules of said Court in such cases made and provided.

HERBERT A. BERGSON
Assistant Attorney General

MELVILLE C. WILLIAMS
Special Assistant to the Attorney General

Dated this 7th day of January, 1949.

227 In the United States District Court

(Title Omitted)

Assignment of Errors and Prayer for Reversal —Filed Jan. 7, 1949

The United States of America, plaintiff in the above-entitled cause, in connection with its petition for appeal to the Supreme Court of the United States, hereby assigns error to the record and proceedings and the entry of the final decree in the district court on November 10, 1948, in the above-entitled cause, and says that in the entry of the final decree the district court committed error to the prejudice of the plaintiff in the following particulars:

1. The court erred in not finding the facts specially and in not stating separately its conclusions of law thereon, and in ordering that the opinion which it filed on November 1, 1948, constitute the court's findings of fact and conclusions of law.

2. The court erred in holding that the defendants have not combined or conspired to restrain or monopolize, and have not effected any unreasonable restraint or monopolization of, interstate commerce in the sale of motor vehicles for use as cabs to the principal cab operating companies in Chicago, New York City, Pittsburgh or Minneapolis.

3. The court erred in holding that the defendants have not combined or conspired to restrain or monopolize, and have not effected any unreasonable restrain or monopolization of, interstate commerce in the transportation of railroad passengers and their luggage between railroad stations in Chicago pursuant to contractual arrangements
228 with railroad or railroad terminal associations.

4. The court erred in finding that in 1929 none of the defendants formed an intent or plan to control commerce in the sales of cabs in any city or place.

5. The court erred in finding that in 1929 none of the defendants formed an intent or plan to compel Parmelee or any of its cab operating affiliates to purchase only CCM cabs.

6. The court erred in finding that in 1929 neither CCM nor Markin possessed the power to compel Parmelee or any of its cab operating affiliates to purchase only CCM cabs.

7. The court erred in finding that during 1929 there were no agreements, express or implied, between CCM and Parmelee or any of Parmelee's affiliates for the exclusive or continuous purchase of CCM cabs.

8. The court erred in finding that CCM recognized that Markin was acting in his personal capacity when, in connection with Parmelee's organization, he entered into an employment contract with Transportation Management Corporation, a wholy owned subsidiary of Parmelee.

9. The court erred in finding that the negotiations which led to Parmelee's formation commenced in 1925.

10. The court erred in concluding that the stock relationships which developed among the defendants were not part of a design to compel the purchase of CCM cabs; were not accompanied by an intent to control commerce in the sale of cabs to the leading cab companies in Chicago, New York City, Pittsburgh, or Minneapolis; and were occasioned by other business factors.

11. The court erred in finding that the transactions during the latter part of 1930 whereby Markin transferred to CCM all of his stock in Motor Cab Transportation Corporation in exchange for stock of CCM, and CCM transferred to Parmelee such Motor Cab stock plus all of CCM's holdings of Parmelee debentures and preferred stock
229 in exchange for 422,787 shares of Parmelee common stock, were not related to any sales of CCM cabs to Parmelee or to any of its cab operating affiliates, and were not accompanied by any intent or plan on the part of any defendant respecting control over commerce in the sales of cabs.

12. The court erred in finding that the purchase by Cab Sales and Parts Corporation of a majority of the stock of Checker Taxi Company, and the loans made to Cab Sales by subsidiaries of Yellow Cab Company for the purpose of aiding Cab Sales in purchasing such Checker stock, were unrelated to the sale of cabs.

13. The court erred in finding that Cab Sales did not acquire Checker's stock to control commerce in the sale of cabs in Chicago or as part of any intent or plan of any of the defendants to compel purchases of CCM cabs.

14. The court erred in finding that it was the business judgment of Checker, Yellow, and the operating subsidiaries of Parmelee during the years 1929 to 1942, inclusive, that the CCM purpose-built cab better served their needs than converted pleasure cars and in implying thereby that their purchases of CCM cabs resulted from exercise of business judgment rather than from extraneous factors.

15. The court erred in finding that neither Yellow, Checker, nor Cab Sales has ever agreed, expressly or impliedly, not to compete with Parmelee or not to engage in the inter-station transfer business in which Parmelee is engaged, and that none of the defendants has, expressly or impliedly, forbidden Yellow, Checker or Cab Sales to compete with Parmelee or to engage in such inter-station transfer business.

16. The court erred in finding that the equipment, personnel and services of Yellow, Checker, and Cab Sales differ from Parmelee's to such an extent that it would be impractical and unlikely for them to compete for Parmelee's inter-station transfer business.

230 17. The court erred in making no findings as to most of the facts, established by undisputed documentary evidence, on which the plaintiff relied.

18. The court erred in concluding that absence of direct stock control of Parmelee by CCM or Markin, or by both together, at the time of Parmelee's organization in April 1929 and shortly thereafter, established that the defendants were not then, or at any time thereafter, parties to a combination and conspiracy to acquire control over operating cab companies for the purpose and with the effect of restraining and monopolizing their interstate purchase of cabs.

19. The court erred in failing to consider whether CCM, through its acquisition of the majority of Parmelee's stock in September or October 1930, acquired operating cab companies pursuant to a combination and conspiracy having the purpose and effect of restraining and monopolizing their interstate purchases of cabs.

20. The court erred in failing to consider whether, in the period subsequent to CCM's acquisition of the majority of Parmelee's stock, the defendants were parties to a combination and conspiracy to maintain and to expand control over operating cab companies, with the purpose and effect

of restraining and monopolizing their interstate purchases of cabs.

21. The court erred in considering that the views expressed in *United States v. Columbia Steel Co.*, 334 U. S. 459, 523, with reference to exclusive dealing between a parent and its wholly owned subsidiary are applicable to, and determinative of the legality of, the wholly different circumstances under which the defendants acquired, maintained, and exercised the power to bring about exclusive dealings between CCM and controlled cab operating companies with respect to the latters' purchases of cabs.

231 22. The court erred in entering a final judgment dismissing the action.

Wherefore, plaintiff prays that the final judgment of the district court may be reversed, and for such other relief as the court may deem just and proper.

Herbert A. Bergson
Assistant Attorney General

Melville C. Williams
Special Assistant to the Attorney General

Dated this 7th day of January, 1949.

241 In the United States District Court
(Title Omitted)

Order Allowing Appeal—Filed Jan. 7, 1949

In the above-entitled cause, the United States of America, plaintiff, having made and filed its petition praying an appeal to the Supreme Court of the United States from the final judgment of this Court in this cause entered on the tenth day of November, 1948, and having also made and filed its petition for appeal, assignment of errors and prayed for reversal, and statement of jurisdiction, and having in all respects conformed to the statutes and rules in such cases made and provided,

It Is Therefore Ordered and Adjudged That the appeal be and the same is hereby allowed as prayed for.

Walter J. LaBuy
United States District Judge

Dated this 7th day of January, 1949.

243 Citation in usual form, filed Jan. 11, 1949, omitted in printing.

247 In the United States District Court

(Title Omitted)

Praecipe for Transcript of Record—Filed January 11, 1949

To: The Clerk of the United States District Court
Northern District of Illinois, Eastern Division

The appellant hereby directs that in preparing the transcript of the record in the above entitled cause for its appeal to the Supreme Court of the United States, you include the following:

1. Docket entries showing filing of the pleadings and papers hereinafter set forth and the entry of the orders hereinafter specified.
2. Amendment to complaint and amended complaint.
3. Answer of each of the defendants to amended complaint.
4. Interrogatories propounded by plaintiff.
5. Proof of service of interrogatories.
6. Requests by plaintiff for admissions under Rule 36 (excluding the photostats of documents attached to such requests).
7. Stipulation that filing with court of the answers served by defendants to plaintiff's interrogatories is waived.

248 8. Stipulation that filing of defendants' answers to plaintiff's requests for admissions under Rule 36 is waived.

9. Complete transcript of the proceedings on the trial, certified by the official court reporter, together with such certification.
10. All plaintiff's exhibits.
11. All defendants' exhibits.
12. Memorandum opinion of the Honorable Walter J. LaBuy, District Court Judge, filed November 1, 1948.
13. Order dismissing the action on its merits entered November 10, 1948.
14. Petition for appeal.
15. Assignments of error.
16. Statement as to jurisdiction, with memorandum opinion attached.
17. Order allowing appeal to the Supreme Court of the United States.
18. Citation to appellees.
19. Notice to appellees under Rule 12 of the Rules of the Supreme Court of the United States.

20. Proof of service of notice to appellees under Rule 12, copies of the petition for appeal, order allowing appeal, assignments of error, statement of jurisdiction with opinion attached, citation and praecipe.
21. Praecipe for transcript of record.

MELVILLE C. WILLIAMS
Melville C. Williams
WILLIS L. HOTCHKISS
Willis L. Hotchkiss
Trial Attorneys
Suite 826, 208 South LaSalle Street
Chicago 4, Illinois
Central 6-6886

251 In the United States District Court

(Title Omitted)

Appellees' Designation for Transcript of Record—Filed January 18, 1949

Re: The Clerk of the United States District Court, Northern District of Illinois, Eastern Division

The appellees hereby direct that in preparing the transcript of the record in the above entitled cause for appeal to the Supreme Court of the United States, you include, in addition to the portions of the record designated by the appellant, the following:

1—The original complaint.
2—The defendants' motion, dated September 16, 1946, to dismiss the complaint for failure to state a claim upon which relief might be granted.
3—The opinion of the Hon. Walter J. LaBuy, District Court Judge, filed November 15, 1946.
4—The Opinion of the Supreme Court of the United States, filed June 23, 1947.
5—The defendants' notice of the proposed order and judgment presented to the Court on November 10,
252 1948, including the plaintiff's subscription that it did not object to the form of said proposed order and judgment.

GALLOP CLIMENKO GOULD & LYNTON
By HAROLD S. LYNTON
A Member

WINSTON, STRAWN & SHAW
By CHARLES J. CALDERINI
A Member
Attorneys for defendants, Checker Cab Manufacturing Corporation and Morris Markin

KIRKLAND, FLEMING, GREEN, MARTIN & ELLIS
By A. LESLIE HODSON
A Member
Attorneys for Defendants Yellow Cab Company and Chicago Yellow Cab Company, Inc.

RINGER, REINWALD & SOSTRIN
By PHILIP E. RINGER
A Member
Attorneys for Defendant Parmelee Transportation Company

JESMER & JESMER
By JULIUS JESMER
A Member
Attorneys for Defendants Checker Taxi Company and Cab Sales and Parts Corp.

253 In the United States District Court

(Title Omitted)

Proof of Service of Appellees' Designation for Transcript of Record

RECEIPT of a copy of Appellees' Designation for Transcript of Record is hereby acknowledged this 18th day of January, 1949.

MELVILLE C. WILLIAMS
Special Assistant to the Attorney General

255 In the United States District Court

(Title Omitted.)

Notice of Motion—Filed Jan. 31, 1949

PLEASE TAKE NOTICE that on January 31, 1949, at 10 A. M. or as soon thereafter as the convenience of the Court permits, the plaintiff will appear before the Honorable Judge

Walter J. LaBuy, or whoever may be hearing motions in his place, and submit to the Court the attached motion for an order in the form submitted herewith, instructing the Clerk of the Court to transmit certain records pursuant to plaintiff's praecipe.

MELVILLE C. WILLIAMS
Melville C. Williams
WILLIS L. HOTCHKISS
Willis L. Hotchkiss
Trial Attorneys
Suite 826, 208 South LaSalle Street
Chicago 4, Illinois
Central 6-6886

PROOF OF SERVICE

RECEIVED this 28th day of January, 1949, prior to 4 P. M. copy of the foregoing notice, together with the motion and proposed order instructing the Clerk of the Court
256 to transmit certain records pursuant to plaintiff's praecipe.

WINSTON, STRAWN & SHAW
By WINSTON, STRAWN, SHAW & BLACK
A Member
Attorneys for defendants, Checker Cab Manufacturing Corporation and Morris Markin

KIRKLAND, FLEMING, GREEN, MARTIN & ELLIS
By DAVID FISHER
A Member
Attorneys for Defendants Yellow Cab Company and Chicago Yellow Cab Company, Inc.

RINGER, REINWALD & SOSTRIN
By PHILIP E. RINGER
A Member
Attorneys for Defendant Parmelee Transportation Company

JESMER & JESMER
By JULIUS JESMER
A Member
By E. TENNEY
Attorneys for Defendants Checker Taxi Company and Cab Sales and Parts Corp.

257 In United States District Court

(Title Omitted.)

Motion for an Order to Instruct the Clerk of Court to Transmit Certain Records Pursuant to Plaintiff's Praecipe—Filed Jan. 31, 1949

The plaintiff's petition for an appeal to the Supreme Court of the United States from the final judgment of this Court having been allowed, and the plaintiff having filed with the Clerk of Court a praecipe designating certain portions of the record of this cause to be included in the preparation of the record for appeal, and the Clerk of Court having only the originals of certain items designated in the praecipe,

WHEREFORE, plaintiff now prays that an order be entered instructing the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, to remove from the files of this cause and transmit for appeal purposes, pursuant to plaintiff's praecipe, the following portions of the record:

(a) The complete transcript of the proceedings on the trial, certified by the official court reporter, together with such certification;
(b) All of plaintiff's exhibits;
(c) All of defendants' exhibits.

MELVILLE C. WILLIAMS
Melville C. Williams

WILLIS L. HOTCHKISS
Willis L. Hotchkiss
Trial Attorneys
Suite 826, 208 South LaSalle Street
Chicago 4, Illinois
Central 6-6886

259 In United States District Court

(Title Omitted.)

Order Instructing the Clerk of the Court to Transmit Certain Records Pursuant to Plaintiff's Praecipe—Jan. 31, 1949

The appeal of the plaintiff to the Supreme Court of the United States from the final judgment of this Court entered on the 10th day of November, 1948, having been allowed, and the plaintiff having duly filed its praecipe with the

Clerk of this Court, and the plaintiff having moved that the Clerk of Court transmit certain original records pursuant to said praecipe,

IT IS HEREBY ORDERED

That the Clerk of this Court, pursuant to the request set forth in the plaintiff's praecipe, remove from the files of this cause and transmit, pursuant to the request of said praecipe, the following portions of the record of the case:

(a) The complete transcript of the proceedings on the trial, certified by the official court reporter, together with such certification;
(b) All of plaintiff's exhibits;
(c) All of defendants' exhibits.

ENTER:

WALTER J. LABUY
United States District Judge

Dated this 31st day of January, 1949.

The Following are the Docket Entries as Designated by Appellant

260 No. 46 C 1339 JUDGE LABUY

UNITED STATES OF AMERICA,
vs.
YELLOW CAB COMPANY, *et al.*

Attorneys for Plaintiff
George B. Haddock
Melville C. Williams
Special Assistants to the Attorney General
Suite 820, 208 S. La Salle St.
Chicago 4, Illinois

Attorneys for Defendants
Jesmer & Jesmer
100 N. La Salle Street
Cab Sales & Parts Corp. and Checker Taxi Co.

Weymouth Kirkland
Howard Ellis
A. L. Hodson and
John F. Flobert
33 N. La Salle St.
Chicago 2, Ill.
Yellow Cab Co. and
Chicago Yellow Cab Co., Inc.

Winston, Strawn & Shaw
38 S. Dearborn St.
Chicago 3, Ill.
Checker Cab Mfg. Corp. and
Morris Markin

Ringer, Reinwald & Sostrin
160 N. La Salle St.
Chicago 1, Ill.
Parmelee Transportation Co.

(D)

261 46 C 1339 JUDGE LABUY CALENDAR

Title of Case

UNITED STATES OF AMERICA,

vs. (D)

YELLOW CAB COMPANY, CHICAGO YELLOW CAB COMPANY, INC.; PARMELEE TRANSPORTATION COMPANY; CAB SALES AND PARTS CORPORATION; CHECKER TAXI COMPANY; CHECKER CAB MANUFACTURING CORPORATION; and MORRIS MARKIN.

Attorneys

For Plaintiff:
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For Defendant:
Jesmer and Jesmer
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Weymouth Kirkland,
Howard Ellis, A. L. Hodson
and John F. Floberg
33 N. La Salle St.
Winston, Strawn and Shaw
First National Bank Bldg.
See att. sheet for Attys.

Receipts, Remarks, Etc.

"SHERMAN ANTITRUST SUIT"

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Date	Filings—Proceedings		Clerk's Fees Pltf.	Clerk's Fees Def't
7-25-46	Filed Complaint and 7 copies	(JBS)	15.00	US
" " "	Issued 5 Summons and 5 copies, with copy of complaint attached to each Summons, to the U. S. Marshal, Chicago, for the following Defendants: Yellow Cab Co., Chicago Yellow Cab Co., Inc., Parmelee Transportation Co., Cab Sales & Parts Corp. and Checker Taxi Co.	RW		
7-25-46	Filed Motion of Pltf.			
" " "	Enter order for the issuance of summons to non-resident Defts. DRAFT—LaBuy, J.			
" " "	Issued and mailed 2 Summons and 2 copies, with copy of Complt. attached to each Summons, to the U. S. Marshal at Grand Rapids, Mich., re Checker Cab Mfg. Co., Kalamazoo, Mich., and Morris Markin, c/o Checker Cab Mfg. Co., Kalamazoo, Michigan. Mailed notice to Pltf's attorney of order entered 7-25-46.			
7-26-46	Mailed certified copy of Complaint filed 7-25-46 to Ant-Trust Div.	W	2.60	US
7-31-46	Filed Summons returned served on Parmelee Transportation Co.		2.00	
" " "	Filed Summons returned served on Checker Taxi Co.	1 Ser.	2.00	
" " "	Filed Summons returned served on Cab Sales and Parts Corp.	1 Ser. W	2.00	
		W		
7-31-46	Filed Appearance of Jesmer and Jesmer, attorneys			

Date	Filings—Proceedings	Clerk's Fees Pltf.	Clerk's Fees Def't
8- 1-46	Filed Appearance of Yellow Cab Co., et al. and their attorneys	W	
8- 5-46	Filed Appearances of Checker Cab Mfg. Corp. and Morris Markin defendants and attorneys Winston Strawn and Shaw		
" " "	Filed Summons returned served on Checker Mfg. Corp.	Fee 4.94	
" " "	Filed Summons returned served on Morris Markin Fee—	2.00	B

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8-12-46	Filed Appearance of Parmelee Transportation Co. and its attorneys, Ringer, Reinwald & Sostrin	RW	
8-13-46	Filed Stipulation		
" " "	Defendants' time to answer or otherwise plead is extended to Sept. 16, 1946. DRAFT—Igoe, J.	RW	
	Mailed notice to attorneys on 8-14-46	RW	
8-16-46	Filed Summons returned served—1 service $2.00 on Yellow Cab Co.		D
" " "	Filed Summons returned served on Chicago Yellow Cab Co.	1 service 2.18—	D
9-16-46	Filed Motion of certain defendants to dismiss Complaint		
" " "	Filed Brief for defendants in support of motion to dismiss, etc.		
" " "	Filed Appendices to Brief for defendants, etc.	W	
9-24-46	Filed Stipulation		
" " "	By stipulation time for plaintiff to file answering brief to defendant's motion to dismiss extended to October 1, 1946—DRAFT—LaBuy, J.		
	Mailed notice to attorneys 9-25-46	mk	
10- 2-46	Filed Proof of Service of Brief	mk	
10- 9-46	Arguments on motion to dismiss set for Oct. 18, 1946 at 10:15 a. m.—LaBuy, J.		
	Mailed notice to attorneys 10-10-46	mk	
10-18-46	On motion of A. L. Hodson leave given Samuel H. Kaufman and Harold S. Lynton, members of the New York Bar, to participate in this hearing on behalf of defendants. Arguments heard and concluded on motion to dismiss the complaint, and said motion taken under advisement.—LaBuy, J.		
	Mailed Notice to Attorneys 10-22-46	W	
11-16-46	Filed Memorandum of Judge LaBuy	W	
11-19-46	Filed Transcript of proceeding before Hon. W. J. LaBuy, J. of 10-18-46.	mk	
11-22-46	Enter order amending on its face, memorandum of Judge LaBuy filed on Nov. 16, 1946 by inserting the word "taxicab" after the word "yellow" on		

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Date	Filings—Proceedings		Clerk's Fees Pltf.	Clerk's Fees Def't
11-22-46 (cont.)	line 15 of page 1, by substituting the word "intra-state" for the word "interstate" at the end of line 6 and the beginning of line 7 on page 3, by substituting the word "requires" for the word "prohibits" on line 33 of page 8, and by substituting the words "to compete" for the words "from competing" on line 34, page 8.—LaBuy, J.			
	Mailed Notice to Attorneys 11-25-46	W		
12- 2-46	Enter Order granting defendants' motions to dismiss complaint—DRAFT—LaBuy, J.	(JS6)		
	Mailed notice to attorneys 12-3-46	mk		
12- 4-46	Issued Certified copy of Order of Dismissal	mk		.10 US
1-27-47	Filed Petition for Appeal by plaintiff and Statement as to Jurisdiction			5.00 US
1-27-47	Filed Assignment of Errors and Prayer for Reversal			
" " "	Filed Praecipe for Transcript of Record			
" " "	Filed Proof of Service			
" " "	Filed Statement calling attention to Supreme Court Rule 12(3)			
" " "	Enter order allowing appeal. DRAFT. Enter order of citation. DRAFT—LaBuy, J.			
	Mailed Notice to Attorneys 1-28-47	W		
" " "	Filed Citation			
2-11-47	Filed 2 Motions to Dismiss or Affirm	W		
2-14-47	Mailed Transcript of Record on Appeal to U. S. Supreme Court, Washington, D. C.	B		8.50 US
7-24-47	Filed Mandate U. S. Supreme Court, Reversing decree of District Court entered Dec. 2, 1946, and remanding cause to said District Court for further proceedings—	(JS6) B		5.00 US
8-29-47	Filed Amendment of Complaint and Proof of Service—	—(32) (1)F		
9- 4-47	Filed Stipulation	(1)		
" " "	On stipulation order time for defendants to move or plead to amended complaint extended to and including September 22, 1947—DRAFT—Barnes, J.			
	Mailed Notice to Attorneys 9-8-47	F		
9-19-47	Filed Stipulation	(1)		
" " "	Order on stipulation, extending time of defts. to move or plead to compit. to October 6, 1947—DRAFT—(1) LaBuy, J.			
	Mailed notice to attorneys 9-22-47	h		

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Date	Filings—Proceedings	Clerk's Fees Pltf.	Clerk's Fees Def't
10- 2-47	Filed Answer of Defendant Checker Cab Mfg. Corp.	(8)	
" " "	Filed Answer of defendant Morris Markin	(10)	
" " "	Filed Answer of deft. Checker Taxi Co.	(8)	
" " "	Filed Answer of deft. Cab Sales and Parts Corp.	(8)	
" " "	Filed (4) Proofs of Service	(4)	h
10- 6-47	Filed Answer of Parmelee Transportation Co. to Amended Complaint	(9)	
" " "	Filed Answer of Yellow Cab Company and Chicago Yellow Cab Company, Inc. to Amended Complaint	(8)	
" " "	Filed Affidavit of Service	(1)	F
11-13-47	Cause set for pre-trial conference Dec. 11, 1947 at at 10:15 A. M.—LaBuy, J.		
	Mailed notice to attorneys 11-17-47		h
11-21-47	Filed Stipulation	(1)	
" " "	By stipulation pre-trial conf. presently reset for Dec. 11, 1947, at 10:15 A. M. reset to December 18, 1947 at 10:15 A. M.—LaBuy, J.		
	Mailed notice to attorneys 11-25-47		h
12- 5-47	Filed Interrs propounded by the plaintiff and proof of service—	(13)	h
12- 9-47	Filed Stipulation re extension of time to file objns to interrs.	(1)	f
12-11-47	By stip. tm extd to file objections to interrs. to Dec. 23, 1947, DRAFT- LaBuy, J.	(1)	
	Mailed notice to attorneys 12-17-47		h
12-18-47	Pre-trial conference held—Issues discussed—Time of defts to move with respect to terrs. extd to Jan. 3, 1948—Cause contd. to April 1948 for trial —LaBuy, J.		
1- 5-48	Filed Stipulation	(1)	
" " "	By stip, tm for defts to answer interrs extd to Feb. 5, 1948—DRAFT—LaBuy, J.	(1)	
	Mailed notice to attorneys 1-7-48		h
2- 4-48	Filed Answers of deft Checker Taxi, co. to Interrs. propounded by plaintiff—	(5)	
" " "	Filed Answers of deft Cab. Sales and Parts Corp. to Interrs. propounded by plaintiff—	(6)	
2- 5-48	Filed Stipulation (filing of answers waived)	(2)	h
2-10-48	Filed Notice	(1)	
2-10-48	Order lv to defts Checker Taxi Company and Cab Sales and Parts Corporation to withdraw from files their answers to interrogs propounded by pltf filed on Feb. 5, 1948 in error—DRAFT—LaBuy, J.	(1)	

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Date	Filings—Proceedings	Clerk's Fees Pltf.	Clerk's Fees Def't
	Mld notice to attys 2-12-48	a	
3- 8-48	Filed four requests for admissions under Rule 36—Checker Cab Mfg. Corp, and Morris Markin, (12)—Yellow Cab Co. and Chgo Yellow Cab Co.—(20)—Parmelee Trans. Co. (13) and Cab Sales and Parts Corp—and Checker Taxi Co.	(7)	
" " "	Filed Photostats of Documents M-1 to M-177 Exhibit A. Set 1, Checker and Markin; #P-1 to P-39—Exhibit B. Set 1 Parmelee Trans Corp.; P-40 to P-192 Exh. B Set 1—Parmelee Trans. Corp.: #Y-1 to Y-129 Ex C—Set 1 Yellow Cab & Chgo. Yellow Cab Co.: #Y-130 to Y-287 Ex. C—Set 1 Yellow Cab & Chgo Yellow Cab Co: and #C-1 to C-51—Ex D Set 1—Checker Taxi and Cab Sales and Parts Corp—	f	
3- 8-48	Filed 4 Proofs of Serv re pltf's request for admissions	(1 Ea.) a	
3-19-48	Filed Stipulation	(1)	
" " "	By stip., defts time to make admission with respect to documents heretofore served or to deny under oath the admissions requested or set forth reason why they can neither admit nor deny extd to Apr. 8, 1948—Campbell, J		
	Mld Notice to Attnys 3-22-48	f	
4- 8-48	By stip., trial reset from Apr. 12, 1948 to May 17, 1948—LaBuy, J		
	Mld Notice to Attnys 4-12-48	f	
5- 7-48	Filed pltf's Mo for issuance of subpoenas	(2)	
" " "	Order, that Clerk of Court issue subpoenas ad testificandum returnable May 17, 1948 at 10:00 a. m. before Hon. Walter J. La Buy, to Morris Markin and R. E. Oakland—DRAFT—La Buy, J.	(1)	
	Mld notice to attys 5-7-48	a	
" " "	Issued and mailed two witness subpoenas and copies (with cards) to U. S. Marshal, Grand Rapids, Mich., re Morris Markin and R. E. Oakland of Kalamazoo, Mich.	a	
5-13-48	Filed Witness Subpoena returned served as to Morris Markin———	1 ser. $5.40	
" " "	Filed Witn. Subpoena returned not found as to R. E. Oakland.	f	
5-14-48	Filed Notice re: Gov's trial Memo.—	(2) f	
5-17-48	Cause called for trial. Mo. of Philip Ringer to admit Charles P. G. Fuller of the New York Bar and mo. of Edward J. Wendrow to admit Samuel H. Kaufman, Harold S. Lynton, Jack M. Ginsberg and Jesse Climenko all of the N. Y. Bar allowed and all of said attys are admitted for the purposes		

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Date	Filings—Proceedings	Clerk's Pltf.
contd.		
5-17-48	of this cause. Opening statements hrd. Evid. hrd in part for pltff and trial adjourned to May 18, 1948 at 10 AM—LaBuy, J	
5-18-48	Further evid. hrd for pltff and trial adjourned to May 19, 1948 at 9:45 A. M.—LaBuy, J	
	Mld Notices for 17th and 18th on 5-21-48	f
5-19-48	Filed Motion	(2)
" " "	Order directing the issuance of sub. ad testificandum to a non-resident witness—DRAFT—LaBuy, J	(1)
" " "	Issued sub. ad testificandum and copy to U. S. Marshal	f
" " "	Further evid. hrd for pltff and trial adjourned to May 20, 1948—at 10 A. M.—LaBuy, J (Mld notice with the 20th)	f
5-20-48	Filed seven witness subpoenas returned served Ser 7 $4.48	f
" " "	Filed Witness sub. returned not found as to T. B. Hogan	
" " "	Further evid. hrd for pltff and trial adjourned to May 21,1948—at 10 A. M.—LaBuy, J	
5-21-48	Further evid. hrd for pltff and by agr. trial adjourned to June 1, 1948 at 10 A. M.—LaBuy, J	
	Mld Notices of the 19th, 20th and 21st on 5-25-48	f
5-19-48	Filed Witness Card—Leonard M. Beasman $15.00	f
6- 1-48	Filed Witness Cards of Arthur Drekholtz (fee paid $3.10 and Matt Rottner (fee paid $2.00)	a
" " "	Further evidence heard for pltf. and trial adjourned to June 2, 1948 at 9:30 a. m.—LaBuy, J.	
6- 2-48	Further evidence heard for pltf. and trial adjourned to June 3, 1948 at 10 a. m.—La Buy, J.	
6- 3-48	Further evidence heard for pltf—pltf. rests—motion for defts. for order of dismissal argued and overruled—opening statements heard in part for defts. and trial adjourned to June 4, 1948 at 10 a. m.—La Buy, J.	
	Mld notice to attys 6-4-48	a
6- 4-48	Opening statements for defts. concluded—evidence heard for defts. in part and trial adjourned to June 7, 1948 at 10:30 a. m.—La Buy, J.	
	Mld notice to attys 6-7-48	a
6- 7-48	Further evidence heard for defts. and trial adjourned to June 8, 1948 at 10 a. m.—La Buy, J.	
6- 8-48	Further evidence heard for deft. and trial cont'd to June 9, 1948—La Buy, J.	

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Date	Filings—Proceedings	Clerk's Fees Pltf	Clerk's Fees Deft
6- 9-48	Further evidence heard for defts.—defts. rest—rebuttal evidence heard—both sides rest—trial adjourned to June 10, 1948 at 9 a. m. Leave to pltf. to file brief and argument on or before June 30, 1948—leave to defts. to file brief and argument within 15 days thereafter and leave to pltf. to file reply within 10 days thereafter—La Buy, J.		
" " "	Filed four (4) Witness Subpoenas returned served as to Raymond R. Dowdle, Arthur Drekholtz, Edward J. Gorman and Matt Rottner. 4 Serv.—Total $3.39		
6-10-48	Arguments heard and concluded and cause taken under advisement—La Buy, J.		
	Mld notice to attys 6-11-48		a
6-28-48	Order by stip that the br of pltff shall be due July 7, 1948 defts br shall be due July 22, 1948—and pltffs reply br shall be due August 2, 1948—DRAFT—La Buy, J.		(1)
	Mld notice to attys 6-29-48		P
" " "	Filed stip.	(1)	P
7-12-48	Filed two Proofs of Service of Brief	(1) (1)	a
7-23-48	Filed stip		(1)
" " "	On stip order time for deft to file brief extended to July 31, 1948 and time for pltff to file reply brief extended to August 10, 1948—DRAFT.		(1)
	Mld notice to attys 7-26-48		P
7-12-48	Filed Brief for the United States	(56)	r
8- 5-48	Time for filing of defts' br. extd to Aug. 9, 1948 and filing of pltff's reply br. extd to Aug. 30, 1948—DRAFT—Sullivan, J. (stip attched)	(1) (1)	f
	Mld Notice to Attys 8-9-48		
8- 9-48	Filed proof of service of br for deft.		(1)
8-24-48	Filed Br. for defts and defts exhibit.		f
8-31-48	Filed Reply br. for the U. S.	(30)	f
" " "	Filed two Proofs of Service	(1 pge each)	f
11- 1-48	Filed transcript of proceedings had before Hon. Judge La Buy on May 17, 1948.	(827)	P
" " "	Filed transcript of proceedings had before Hon. Walter J. La Buy on June 1, 1948.	(595)	
" " "	Filed transcript of proceedings had before Hon. Walter J. La Buy on June 7, 1948.	(407)	P

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Date	Filings—Proceedings	Clerk's Fees Pltf.	Clerk's Fees Def't
11- 1-48	Filed Memorandum Opinion of Judge La Buy (15)		P
11-10-48	Filed notice	(1)	
" " "	Order opinion of the Court filed herein constitute Courts Findings of fact and conclusions of law and that action be dismissed on the merits—DRAFT—La Buy, J. (JS6)	(1)	
	Mld notice to attys 11-12-48		P
1- 7-49	Filed Petition for appeal	(1)	
" " "	Appeal to U. S. Supreme Court allowed—DRAFT—LaBuy, J.	(1)	
" " "	Filed Assignment of Errors and prayer for reversal	(5)	
" " "	Filed Statement as to jurisdiction (7)		B
1-11-49	Filed Citation	(1)	
" " "	Filed Statement calling attention to the provisions of Supreme Court Rule 12(3)	(1)	
" " "	Filed Praecipe for transcript of record	(2)	
" " "	Filed Proof of service (1)		B
1-18-49	Filed Appellees' Designation for transcript of record	(2)	
" " "	Filed Proof of service of appellees' designation etc. (1)		B
1-31-49	Filed notice	(2)	
" " "	Filed motion	(1)	
" " "	Order to instruct the Clerk of the Court to transmit certain records pursuant to pltf's praecipe—DRAFT—La Buy, J.	(1)	
	Mld notice to attys 2-3-49		P
2- 3 49	Filed Stipulation dated April 26, 1948 (1)		B

270 Clerk's Certificate to foregoing transcript omitted in printing.

272 In the District Court of the United States
For the Northern District of Illinois
Eastern Division

No. 46 C 1339

Civil Action

UNITED STATES OF AMERICA, PLAINTIFF,

vs.

YELLOW CAB COMPANY; CHICAGO YELLOW CAB COMPANY, INC.; PARMELEE TRANSPORTATION COMPANY; CAB SALES AND PARTS CORPORATION; CHECKER TAXI COMPANY; CHECKER CAB MANUFACTURING CORPORATION; AND MORRIS MARKIN, DEFENDANTS.

Reporter's Transcript of Proceedings on Motion to Dismiss—Filed Nov. 19, 1946

Transcript of proceedings had in the above-entitled cause, before the Hon. Walter P. LaBuy, one of the judges of said court, in his courtroom in the United States Court House, at Chicago, Illinois, on the 18th day of October, A. D. 1946, at 10 o'clock a. m.

PRESENT:

Mr. Melville C. Williams, Special Assistant to the Attorney General and Mr. Donald G. Balthis, Special Attorney, appeared for plaintiff, United States of Amer-
273 ica;

Messrs. Kirkland, Fleming, Green, Martin & Ellis, by Mr. A. Leslie Hodson, and Mr. John F. Floberg, appeared on behalf of defendants, Yellow Cab Company and Chicago Yellow Cab Company, Inc.;

Messrs. Kaukman, Gallop, Climenko, Gould & Lynton, by Mr. Samuel H. Kaufman, and Mr. Harold S. Lynton, Messrs. Winston, Strawn & Shaw, by Mr. Edward Windrow, appeared on behalf of defendant, Checker Cab Manufacturing Corporation and Morris Markin;

Messrs. Jesmer & Jesmer, by Mr. Julius Jesmer, appeared on behalf of defendants, Checker Taxi Company and Cab Sales and Parts Corporation;

Messrs. Ringer, Reinwald & Sostrin, by Mr. Philip Ringer, appeared for defendant, Parmelee Transportation Company.

274 The Clerk: United States of America vs. Yellow Cab Company, *et al.*; motion to dismiss.

Mr. Hodson: If the Court please, I would like to present Mr. Samuel H. Kaufman and Mr. Harold S. Lynton. They are both from New York, they are both members of the bar of New York and have practised there for many years. I would like to move their admission to this court for the purposes of this case. They represent Morris Markin and the Checker Cab Manufacturing Corporation.

The Court: They may be admitted in this case.

That leaves how many lawyers in the case?

Mr. Hodson: I may say this with respect to the argument this morning, that there will be just two arguments. Mr. Kaufman will make a general argument and I will make a short argument. We have done that for the convenience of the court.

The Court: Very well, proceed.

Argument on Behalf of Defendants

By Mr. Kaufman:

May I at the outset express my appreciation for the privilege of addressing this court in this case?

The defendants here move under Rule 12b of
275 the Civil Rules of Procedure, to dismiss the complaint for failure to state a claim upon which relief can be granted.

This motion has been made after long and careful consideration since it is a motion addressed to the pleadings. After such consideration we have concluded that not only does the complaint fail to state a claim as a matter of pleading, but that even if the government could on a trial establish all of the allegations of the pleadings, which we most vigorously dispute, no cause of action would exist against these defendants. Accordingly, we ask a disposition of this case on this motion.

The nature of the action is that the government alleges that the defendants have conspired to restrain and monopolize interstate trade and commerce in the furnishing of taxicab services in the city of Chicago. It is further charged that interstate trade and commerce is restrained by the sale of motor vehicles to the operating companies in Chicago, Pittsburgh, New York and Minneapolis.

The defendants named in the complaint consist of six corporations and one individual. The complaint alleges that these corporations are subject to a common control and that that control is exercised through the indi-
276 vidual defendant Markin.

For convenience and simplicity, these defendants may be divided into the following three groups:

Checker Cab Manufacturing Company, which is a corporation that manufactures and sells motor vehicles and is the parent, according to the allegations of the complaint, and directly or indirectly controls the other two groups.

The second group of defendants is the Yellow Cab Company and Checker Cab Company, which are the owners of the taxicab licenses issued by the City of Chicago. They, or their related companies, namely, Chicago Yellow Cab Company and Cab Sales and Parts Corporation, who, for simplicity, will not be considered separately, but those companies operate licensed taxicabs for the general public in Chicago.

And the third group is the Parmelee Transportation Company. This corporation operates what the complaint describes as "cabs," but which are really limousine-coaches carrying seven or ten passengers, from one railroad to another, pursuant to contracts with railroads and railroad terminal associations. This corporation is also the parent of the other operating companies which operate taxicabs in New York, Pittsburgh and Minneapolis.

277 In the language of the complaint in Paragraph 18, it charges two offenses against the defendants. Those two offenses are, (1) that defendants have conspired to restrain and monopolize interstate trade and commerce in the business of furnishing cab services for hire in Chicago and its vicinity.

The second of the charges is that the defendants have conspired to restrain and monopolize interstate trade and commerce in the sale of motor vehicles for use as cabs to the principal cab operating companies in Chicago, Pittsburgh, New York and Minneapolis.

The first of these charges deals with the taxicab operations in Chicago, and nowhere else.

The second charge deals with the sales of motor vehicles by the Manufacturing Company to the operating companies.

I shall attempt to fairly analyze the charges relating to the operation of taxicabs in Chicago and then I shall attempt to deal fairly with the charge concerning the sale of the vehicles by the Manufacturing Company to the operating companies.

Coming now to the charge relating to the operation of taxicabs in Chicago as alleged in the complaint, Para-

graphs 9 to 13 inclusive, we find that these operations
278 are regulated by ordinances of the City of Chicago.

All of these ordinances have been referred to in the complaint. For the purpose of accuracy and convenience we have printed them as an appendix to our brief and we respectfully request that the Court take judicial notice of them and they be made a part of the record in this case.

Those ordinances demonstrate that the issuance of taxicab licenses and regulations of taxicab operations are matters wholly within the control of the City of Chicago.

This control has been vested in the City of Chicago by delegation from the Legislature of the State of Illinois.

This delegated power has been exercised by a series of ordinances enacted by the City Council of this city.

The first ordinance with which we are concerned is the ordinance of September 25, 1929 where the number of taxicab licenses was limited to 5,289, of which Yellow received 2,350 and Checker, 1,750, or together approximately eighty per cent of the total licenses issued.

The second ordinance with which we are concerned is the ordinance of May 18, 1934. The difficulties besetting
279 this ordinance, as your Honor well knows, from that time and immediately prior to 1934, was immediately after the commencement of the depression in 1930, and the difficulties besetting the taxicab operations in 1933 and 1934, are fully described by an opinion of the Corporation Counsel of the City of Chicago, which is fully set out in the appendix which we have had printed.

A part of his opinion states in substance, and I quote:

"Vacant taxicabs were cruising the streets for passenger business. The cost of taxicab operations was excessive because of the large percentage of dead mileage. Individual operators and drivers employed by corporate operators were unable to make a decent living because of the keen competition and a war of cutting rates of fares to attract business caused congestion of the streets, endangered taxicab passengers and others making ordinary use of the streets and created such disorder as to require police intervention."

As a result of this opinion and other hearings the ordinance of May 18, 1934 was passed, and it limited the number of taxicab licenses to 4,108 and provided most
280 comprehensively for licensing, operation and regulation of taxicabs, including the establishment by

the City of Chicago of reasonable and uniform rates and charges and standards of service. Of the total of 4,108 licenses so issued, Yellow received 2,166 and Checker, 1,500, or together approximately 89 per cent of the total number of licenses issued under the terms of that ordinance.

The third and last ordinance with respect to which we are concerned, as alleged in the complaint, is the ordinance of December 22, 1937. And the conditions leading to the enactment of this ordinance are thus described in the filed opinion of the Corporation Counsel which is also a part of our printed appendix. And I quote from his opinion, as follows:

> "Because of the world-wide economic depression, operations under the ordinance of May 18, 1934 did not prove as successful as was hoped. On November 20, 1935, the Public Vehicle License Commissioner addressed a communication to the City Council calling attention to the fact that the safety of passengers and pedestrians were affected by unprofitable operation of taxicabs, that operators were not able to make reasonable returns on their investment, that drivers were not earning a living wage, and if such conditions were suffered to continue it would result in injury to the public."

281 He recommended that the City Council determine whether or not there should be a reduction in the number of cabs to be operated in Chicago as a measure of relief from existing conditions. The communication was referred to the Committee on Local Transportation for consideration on November 26, 1935.

The Committee took no action upon this recommendation until conditions became critical through strikes of taxicab drivers resulting in violence upon the streets of Chicago. Federal Conciliators from Washington came to Chicago and recommended a substantial increase in taxicab rates to enable the taxicab chauffeurs to obtain a satisfactory wage but a compromise was effected upon recommendation of the Committee on Local Transportation to grant a small increase in the rates of fare and to extend the term of the contract ordinance of May 18, 1934 to December 31, 1945, upon condition that a sufficient number of taxicab licenses be surrendered by licensees to reduce the number of taxicabs within the City of Chicago from the authorized number of 4,108 to 3,000.

This ordinance of December 22, 1937 was adopted by the City Council when Yellow and Checker voluntarily offered to surrender sufficient licenses to reduce the number
282 of taxicabs to 3,000 upon condition that if public convenience and necessity required additional taxicabs in the future, those licensees, voluntarily surrendering some of their licenses, should have a prior right to the number of taxicab licenses to be issued.

Yellow surrendered 571 licenses and Checker surrendered 500 licenses, leaving them with 1,595 and 1,000, respectively. Because Yellow and Checker surrendered a greater proportion of their licenses than other licensees, their proportion of the total licenses dropped from 89 per cent in 1934 to approximately 80 per cent after the passage of the December 22, 1937 ordinance.

Now, turning to the ordinances themselves. The validity of these ordinances has been sustained by both this court, in the case of Capitol Taxicab vs. Cermak, 60 F. (2) 608, and by the state court, the Circuit Court of Cook County in the case of Yellow Cab vs. City of Chicago, decided on February 5, 1946, less than nine months ago. Other cases in Illinois and elsewhere, referred to at pages 12 to 15 of our main brief, likewise sustain the validity of this type of ordinance; and the plaintiff's brief on pages 6 and 7 concedes the validity of these ordinances.

The Supreme Court of the United States has
283 squarely held that matters covered by local legislation are not subject to or even within the contemplation of the Sherman Act. This subject is more fully discussed on pages 15 to 17 of our main brief, and I may add here that Mr. Chief Justice Stone in the leading case on the subject, in Parker vs. Brown, 317 U. S. page 341 said:

> "We find nothing in the language of the Sherman Act or in its history which suggests that its purpose was to restrain a state or its officers or agents from activities directed by its legislature."

We contend, therefore, that the issuance by the City of Chicago of taxicab licenses to Yellow and Checker is valid, and, being a local legislative matter, is not subject to the Sherman Act.

Likewise, it has been determined by the Circuit Court of Cook County that the ordinance of December 22, 1937 was a "contract ordinance" under which Yellow and Checker were entitled to receive new licenses, not exceed-

ing the number of licenses surrendered by them, on any subsequent increase in the number of licenses by the City of Chicago. As a contract ordinance mutual benefits exist both for the city and the licensees.

An analysis of the complaint here demonstrates
284 that its principal purpose is to abrogate the rights of Yellow and Checker to taxicab licenses which were so granted by the ordinances of the City Council and sustained by the Illinois court. The prayer of the complaint requests "that defendants be required to release and waive any and all rights that they may have or claim to have under the ordinance of the City of Chicago of December 22, 1937, and its extension, to secure additional taxicab licenses in excess of the number now held by both Yellow and Checker."

Despite this prayer of the complaint, the plaintiff argues in its brief that the complaint does not seek to affect these ordinances but is directed only against the defendants. What the plaintiff's argument really amounts to is this,—that it concedes the validity of the ordinances but it seeks only to enjoin the defendants from the benefits of these ordinances. This is palpably mental gymnastics and is an attempt to sever into two parts a single, bilateral ordinance which has been adjudged a contract ordinance by the courts of this state.

Since, therefore, the matters concerned on this first charge dealing with the operations of the taxicabs are essential local matters, concerning which the munici-
285 pality has exercised its powers, these taxicab operations, we claim, are not within the federal province of the Sherman Act; and on this basis alone the first charge set out in the complaint should be dismissed.

Going further with reference to the first charge, even assuming that this court may inquire into matters on which municipal authorities have acted, this court must find as an indispensable element in a suit under the Sherman Act, that the commerce alleged to be monopolized or restrained is interstate commerce. Stating the proposition conversely, unless interstate commerce is restrained or monopolized no cause of action exists under the Sherman Act, and we shall demonstrate that the commerce on which the plaintiff bases its contention is local, purely local, and is not interstate commerce.

The charge in the complaint is that the defendants conspired to restrain interstate trade and commerce in the

business of furnishing cab services for hire in Chicago and its vicinity.

The plaintiff does not claim and cannot contend that the general taxicab services in Chicago constitute interstate commerce. These taxicabs, even according to the allegations of the complaint, do not cross state lines; and these local services are governed by municipal regulation.

286 As I have indicated with respect to the 1934 ordinance, it expressly provides that such services shall be "between any two points within the corporate limits of the city."

The nature of the interstate trade and commerce alleged in the complaint might seemingly be the interstate transportation of passengers by railroads. This would seem to appear from Part III of the complaint, entitled "Nature of the Trade and Commerce Involved," which recites in paragraph 4 that Chicago "is the terminus of a large number of railroads engaged in the transportation of passengers among a majority of the states in the United States" and refers to "said passengers in interstate commerce" in paragraph 4, and persons departing from or arriving at "railroad stations in Chicago."

The plaintiff, however, concedes at page 4 of its brief that the commerce alleged in the complaint is not interstate commerce of railroads. This concession obviously results from the utter lack of any showing that the defendants have monopolized or restrained railroad transportation.

The nature of the interstate commerce on which the plaintiff presently bases its contention is "the transportation by cabs of interstate railroad passengers between,

287 to, and from railroad stations in Chicago." Whether this present contention represents a change from or a narrowing of the general allegations of the complaint, it is clear from the plaintiff's brief that this is the last single thread by which the plaintiff seeks to bring this case under the Sherman Act.

The question as I see it thus presented on this phase of the case is this—Does the defendants' general Chicago taxicab business become interstate commerce because, or to the extent that, some of their taxicabs carry passengers who have been or are about to become interstate railroad passengers? If this question be answered in the negative, and we believe that it must be, the complaint fails to state a claim under the Sherman Act with respect to taxicab services condemned in the complaint as relates to Chicago

and its vicinity, and on this ground alone the complaint relating to the charge of interstate commerce, in so far as it relates to the first charge, must be dismissed.

It must also be observed that railroad passengers who do not use taxicabs to go to or from Chicago railroad stations may use trolley cars, subways, buses, private automobiles, or other means of conveyance. Any contention, therefore, that the taxicab operations are part of the interstate commerce of railroad passengers within the
288 meaning of the Sherman Act immediately carries with it the contention that such trolley cars, subways, buses, private automobiles or other means of conveyance are likewise part of the interstate commerce of railroad passengers within the meaning of that Act. This may speedily be carried to ridiculous extremes. Is the Chicago luggage store which sells luggage to railroad passengers engaged in interstate commerce? Does the Chicago drug store which sells toilet articles to railroad passengers engage in interstate commerce? Does the lunchroom at a station operated by a concessionaire who furnishes food to a traveler in the station who continues his interstate journey, is that lunchroom engaged in interstate commerce? That argument carries almost to ridiculous arguments.

Our main brief and more particularly our reply brief, at pages 3 and 4, enumerate a number of facts showing that the defendant taxicab companies have no corporate contractual or other relationship with any of the railroads; that a railroad passenger has, as part of his railroad transportation, no contractual or other relationship with the taxicab companies; that the taxicab services are completely independent of the railroad transportation; and that the railroad passenger is a completely free
289 agent as to the local method of transportation he desires to use in going to, from, or between railroad stations.

As the Supreme Court has frequently stated in cases referred to on page 3 of our brief, "commerce among the states is not a technical legal conception, but a practical one, drawn from the course of business."

There are cases holding that taxicab services substantially identical with those of the defendants do not constitute interstate commerce. And a case almost precisely in line with the facts in this case, is the case of New York *ex rel.* Pennsylvania Railroad against Knight, decided in the 192 U. S., page 21. In that case the Pennsylvania Rail-

road Company, an interstate railroad, itself actually owned and operated a taxicab service the sole business of which was passenger pick-up and delivery of passengers between their homes and hotels from the railroad station in New York City and the terminal. The railroad company contended that this cab service was a part of the interstate journey and that consequently an interference with it by the City was an interference with interstate commerce. The Supreme Court held, however, that, even though the interstate railroad company furnished the cab service, the service itself was purely local and intrastate. In
290 pointed language particularly applicable to the case at bar, Mr. Justice Brewer wrote, and I quote:

"As we have seen, the cab service is rendered wholly within the state and has no contractual or necessary relation to interstate transportation. It is either preliminary or subsequent thereto.

"If the cab which carries the passengers from the hotel to the ferry landing is engaged in interstate transportation, why is not the porter who carries the traveler's trunk from his room to the carriage also so engaged?"

The court also says:

"We are of opinion that the cab service is an independent local service, preliminary or subsequent to any interstate transportation."

The court might as well have decided that case on the narrow question, that taxation by the City of New York against the taxicab company was not an interference with interstate commerce. The court did not choose to determine that case on that narrow ground but, rather, it went the full length and absolutely held and determined that this type of operation, the same type of operation that there exists in Chicago, was not in interstate commerce.

I have not had the privilege of living in
291 Chicago, but my attention has been called to the fact that many of the elevated lines have entrances to railroads carrying interstate commerce; that there is a direct passage from which interstate commerce passengers from the railroads may go onto the elevated. Could it ever be argued or contended that that puts the elevated lines in the city of Chicago in interstate commerce transportation? I do not think so and there is no case that so indicates.

The independence of taxicab services from any railroad transportation is clear from the very terms of the munici-

pal ordinances under which the taxicabs operate. Section 4 of the 1934 ordinance provides, and I quote:

"Every person shall be entitled to the service of the licensee," * * * that is the operating company, * * * "at the established rates and charges between any two points within the corporate limits of the city."

This duty prescribed by ordinance to serve "every person" and to go to any destination chosen by such person "within the corporate liimts of the city" could not, of course, be restricted by any arrangements with railroads, and, in fact, is not so restricted. These are "public"
292 taxicabs, operated by public license. These are public taxicabs operated by public license and operated for the benefit of the general Chicago public. They are local services, locally operated.

There are other cases cited on pages 5 to 9 of our reply brief, setting forth the same general rules that I have indicated.

The defendant in its brief has attempted to distinguish the Knight case from the case at bar, and to that plaintiff in its brief cites numerous cases under the National Labor Relations Act and other statutes which are not in point because the plaintiff confuses the subject of interstate commerce with local acts affecting interstate commerce. Under the plaintiff's present limited contention, if, as we contend, these defendants' taxicab business is not transformed into interstate commerce because some of their taxicabs carry passengers who have been or are about to become interstate railroad passengers, there is no interstate commerce presented in the complaint which is alleged to have been monopolized or restrained, and consequently, the complaint, the first charge of the complaint relating to the operation of taxicabs, on that ground must also be dismissed.

Not only, as an ultimate matter, are the defend-
293 ants' taxicab services local and not interstate commerce, but the complaint utterly fails as a pleading to allege sufficient facts showing that these taxicab services constitute interstate commerce. The complaint does not in terms anywhere allege that these taxicab services are interstate commerce. The complaint does not allege that railroads whose terminals are in Chicago are engaged in interstate transportation of passengers.

The complaint then alleges that some of these passengers "use cabs of the defendants, and others, in going to,

from, or between railroad stations." It is submitted that purely as a matter of pleading, this allegation of the "use of cabs," without showing any relationship whatever between those cabs and the railroads, is an utterly insufficient allegation showing that the defendants' taxicab services constitute interstate commerce. As a matter of pleading alone, this charge of the complaint must be dismissed, and the cases under the Sherman Act so hold.

We have shown up to this point in this argument that under the municipal ordinances the first charge of the complaint fails to state a claim in violation of the Sherman Act.

We have also shown, I believe, that the indispens-
294 able element of interstate commerce is absent from the first charge of the complaint; and therefore no violation of the Sherman Act is alleged.

But even beyond this point, these two contentions, the first charge of the complaint relating to operations of taxicabs in Chicago, fails to show any monopolization or restraint of taxicab operations in Chicago, or any restraint of interstate commerce.

The operating companies obviously do not have any control of railroad transportation; that control is within the railroads themselves. Nor does the complaint suggest any basis of monopolization of restraint or any discrimination against railroad transportation; and the plaintiff concedes at page 4 of its brief that no such monopolization or restraint is claimed by plaintiff.

Any argument by the plaintiff of monopolization or restraint of the defendants' taxicab services presents immediately the following questions:

Unless such services themselves constitute interstate commerce, no interstate commerce exists on which any monopolization or restraint can operate.

The second question is, the issuance of licenses and the regulation of taxicabs by the City of Chicago places control over these taxicab services in the city itself. There-
295 fore, any monopolization or restraint which exists under the Chicago ordinances is not subject to attack by the plaintiff under the Sherman Act.

The logical result of the plaintiff's contention in this case would be to permit the federal government to regulate taxicab operations in the city of Chicago, and, to the extent of any such regulation, at least, supersede the City of Chicago. Taxicab operations would then be not a local but a federal matter.

But coming further to an analysis of the complaint, we find that no monopolization or restraint against taxicab services is alleged in the complaint.

The complaint alleges that Yellow and Checker will not attempt to compete with Parmelee for contracts with the railroads and that Parmelee will not compete with Yellow or Checker in the general taxicab business.

The facts, according to the complaint, are that Yellow and Checker furnish taxicab services as licensees of the City of Chicago and, as we have shown above and as we have already indicated, are required by ordinance to serve "every person" who desires to use the cab service, "between any two corporate limits of the city." Parmelee is not a licensee of the City of Chicago and is not en-
296 gaged in the cab business, but transports railroad passengers between stations pursuant to contracts with railroads or railroad terminal associations. The duties of Yellow and Checker, as public licensees, to transport "every person" to any destination within Chicago chosen by him cannot be restricted by contracts with railroads to transport only railroad passengers between stations.

Similarly, on the other hand, Parmelee cannot furnish cab services for the general Chicago public since it is not a licensee of the City of Chicago. Consequently, the operations of Yellow, Checker and Parmelee, in conformity with the requirements of the law, cannot be the basis of any restraint by one as against the other.

Factually, Parmelee's business differs completely from that of the taxicab operating companies. Parmelee does not operate private taxicabs. The complaint in a general way indicates at one place that it operates cabs; in another place it indicates that it operates coaches carrying from seven to ten passengers. Both of those allegations are inconsistent with each other because it refers, the complaint refers to cabs being licensed and it does not state in substance that the so-called cabs of Parmelee are licensed cabs, although the complaint states that they are licensed
297 cabs and I am certain that the government will concede on the argument that the cabs operated or the vehicles operated by Parmelee are not the garden variety of taxicab that you see around the streets and which are licensed subject to city regulation.

Now, with respect to Parmelee, Parmelee has contracts with the railroads for the transportation of its passengers between given points or given terminals. And it is settled

in law that the railroads may make contracts for transportation between railroad stations with whomever they wish.

The leading case so holding is Donovan against Pennsylvania Railroad, 199 U. S., which concerned Parmelee Transfer Company, a predecessor of the Parmelee Company here involved. The Donovan case and other cases decided by the Supreme Court on this point are referred to on pages 24 to 26 of our main brief and definitely hold that it is no restraint of trade for a railroad company to select the person with whom they make a contract for the transportation of passengers from its terminus to any other place. In the sense that the defendant operating companies are all offered to carry passengers to or from railroad stations, they clearly do compete with each other, and
298 the complaint so says. The complaint argues in one point that the operating companies, namely Yellow and Checker, do not compete with Parmelee, and yet the very basis on which they attempt to apply the Sherman Act to this case is that the operating companies are engaged in interstate commerce because Chicago is a terminus of many railroads and many persons use taxicabs in going from one station to another. That single thread with which they attempt to claim that the operating companies are in interstate commerce and that allegation is inconsistent with the rest of the allegations of the complaint that there is no competition as between the operating companies and Parmelee, and therefore, there not being competition there is a restraint of trade. To argue that these companies, commonly controlled, should compete in a different manner than the one in which the complaint indicates they do, is to argue that the various branches of General Motors, namely, Chevrolet, Buick, Oldsmobile, Cadillac and others, should compete in a different manner than they do at the present time. Clearly no such argument can be made.

Again, as a matter of pleading, and as a matter of substance, we charge that there has been no showing of a restraint of trade and commerce and that the first
299 charge of the complaint must be dismissed on that ground alone.

We have now shown with respect to the first charge of the complaint:

1. That the taxicab regulations by the City of Chicago constitute a local matter and is not subject to the federal jurisdiction of the Sherman Act.

We have also shown (2) that the furnishing of taxicab services in the city of Chicago is not interstate commerce; and

3. That the defendants, there is no showing that the defendants do restrain or monopolize interstate commerce.

If this court finds that the plaintiff has failed in establishing any one of these three fundamentals, the first charge of the complaint must be dismissed.

I shall now go to the second charge in the complaint which relates to the allegations that the defendants have conspired to restrain and monopolize interstate trade and commerce in the sale of motor vehicles for use as taxicabs to the principal cab operating companies in Chicago, Pittsburgh, New York and Minneapolis.

The complaint does not allege and of course could
300 not allege that the Checker Cab Manufacturing Company, referred to here as the Manufacturing Company, which is merely a flea in the general automobile business as compared with General Motors, Ford, Chrysler, Studebaker, Hudson and the other companies, has a monoply of either the manufacture or sale of cabs in interstate commerce.

They do not allege that. On the contrary, the plaintiff concedes on page 40 of its brief that the manufacturing company has no monopoly of either the manufacture or sale of cabs in the United States. It attempts to confine its charge relating to the violation of the Sherman Act to only this, that the manufacturing company, which is not a monopoly, supplies the entire cab requirements of its controlled outlets. The charge is that the manufacturing company controls the use or the purchase by its controlled affiliates of their requirements.

This is indeed a serious charge. No one would deny that a manufacturing corporation may lawfully create a subsidiary as an outlet for only its product; and the purpose obviously is that such subsidiary will buy only the products of the manufacturer and not those of another manufacturer. Is the result any different if, instead of creating such subsidiary, a manufacturer, with the same
301 purpose, acquires an existing corporation which thereby becomes its subsidiary, as such outlet?

We think that it is well-settled law that sales to, or purchases by, exclusive agents do not constitute a restraint of trade. And we have at pages 35 and 36 of our brief cited cases in support of that proposition.

This principle, we believe, is also well-recognized by the recent case of United States against Paramount Pictures, Inc., decided very recently in the 66 Fed. Supp., page 323, which presented a far more extreme case of national producers and controlled outlets than does the instant case.

In that case the major national motion picture companies distributed pictures produced by themselves to subsidiaries, controlled outlets, owning 3,000 out of 18,000 theaters in the United States. The Expediting Court held that this did not monopolize or restrain trade, notwithstanding that in some cities, including Philadelphia and Cincinnati, all first-run theaters were owned by such subsidiaries of the main defendant in that case.

That same principle is also recognized by numerous cases sustaining intensive large scale business integration,
of which United States vs. United States Steel Cor-
302 poration, referred to at page 33 of our main brief,
is an outstanding example. In that case the Supreme Court held that no monopolization or restraint of trade existed, notwithstanding that United States Steel Corporation represented a combination of over 180 independent companies and aggregated more than fifty per cent of the productive power of that industry.

This very thing is something that we see in every day business, that manufacturers, not being able to complete with other manufacturers, create an affiliate for their product. And in this case the Checker Cab Manufacturing Company, merely being a flea as compared to the large automobile companies, and not being able to compete with General Motors and Ford and Chrysler and the others that I have indicated, for the purpose of creating an outlet for its product, has undertaken to acquire companies who have use for their products. That is all that has happened here and the cases and the business says that that is perfectly proper, particularly where the total result is infinitesimal as compared with the great number of automobiles sold by the major automobile companies.

Taking those accepted business principles and the decisions of the court, what then is the conspiracy to which the complaint refers? That term itself, the term "conspiracy" in the complaint is nothing but a meaning-
303 less, conclusory characterization, for the conspiracy
charged is to do only that which has been demonstrated to be lawful,—to acquire as an outlet a subsidiary which will buy only from its parent.

None of the cases referred to by the plaintiff supports its curious contention that a parent not previously a monopolist becomes a monopolist when it acquires a subsidiary to purchase only its product. All of the cases referred to by the plaintiff are, on the contrary, cases of general monopolies and none was concerned with the sale of products to subsidiaries as outlets.

So in the case primarily relied on by the plaintiff, namely, United States vs. Klearflax Linen Looms, 63 F. Supp., the defendant, unlike the manufacturing corporation in this case, was concededly a national monopoly. As was said by the court in the opening of its opinion, "Klearflax Linen Looms," and I quote, "is the only manufacturer of linen rug material in the United States." Clearly a monopoly as against the flea as compared to the major automobile companies.

The plaintiff's brief making an arbitrary classification as to licensed taxicabs, argues that manufacturing company's sales are ten per cent of the national sales of
304 licensed cabs. This percentage is, and this is in their brief, not in their complaint but in their brief, this percentage is, of course, greatly diminished if unlicensed as well as licensed cabs are included; and even the complaint does not differentiate between licensed and unlicensed cabs in its charge of monopoly in the sale of motor vehicles for use as cabs. But even a percentage of ten per cent of national sales is utterly insufficient to constitute a monopoly.

In the Aluminum case, in the Standard Oil case and in the United States Steel case, which are cited on pages 29 and 30 of our brief, percentages of 26 per cent, 33 per cent and 50 per cent were said to be insufficient to constitute a monopoly, and 60 per cent or 64 per cent was said to be doubtful, by the United States Supreme Court.

So that according to the allegations of the government's brief, they charge us with selling ten per cent of the cabs in the United States and there is no foundation for the statement. They say it is true, but it is not. But even if it were true, the courts have already held that percentages of total output of 26 per cent or a total of 33⅓ per cent of the total or even 50 per cent of the total does not constitute a monopoly, and they go further and say that even 60 or 64 per cent might be doubtful.

305 As a practical matter, the plaintiff's charge that the manufacturing company which is in direct compe-

tition with such enormous corporations as General Motors, Ford and Chrysler, has monopolized the interstate sale of cabs, by supplying the entire requirements of its subsidiaries, is little short of ridiculous. Indeed, the plaintiff's argument would tend only to increase the already dominant position of these enormous automobile companies in the trade today.

In reality, the references of the complaint and the plaintiff's argument, concerning monopoly and the sale of cabs, is merely an attempt to inject into this action a basis for federal jurisdiction which does not exist.

Even the plaintiff in the instant case does not ask that the manufacturing corporation cease sales to its subsidiary outlet, Checker. Thus the plaintiff's prayer for relief itself includes within a single permissible group of corporations, the manufacturing company as seller, and Checker as subsidiary purchaser.

As I have already indicated, and as will be shown in the conclusion of this argument, the object of this action concerns the issuance of taxicab licenses by the City of Chicago, and not taxicab sales.

I think we have demonstrated that there is
306 no monopoly or restraint in the sale of cabs, and therefore the second charge of the complaint should be dismissed.

I think we have argued and I think we have demonstrated that neither the first charge of the complaint nor the second charge has any basis in law or in fact and that the real purpose of the entire complaint is to supersede the City of Chicago in its issuance of licenses to Yellow and Checker and in its local regulation of taxicabs.

The prayer for relief seeks expressly to compel the defendants, Yellow and Checker, to surrender rights to taxicab licenses granted by the city ordinances, so that such licenses may be issued to others.

This object appears from the plaintiff's brief (page 18) which states that "the complaint seeks only to free the City of Chicago from the bonds imposed by the defendants' conspiracy.

This object likewise appears from the entire development of the complaint, its repeated emphasis upon matters local to the City of Chicago, and the entire formulation of the prayer for relief, which, in addition to asking abrogation of existing rights to licenses, concerns the regulation of local taxicab operations.

307 Irrespective, it seems to me, on the strength of the complaint to attempt to make them fit into an alleged violation of the Sherman Act the prayer for relief discloses that the real purpose of the representatives of the government is to attempt to supersede the legislative judgment of the City of Chicago.

In the language of Mr. Chief Justice Stone in Parker vs. Brown, cited on pages 15 to 17 of our brief, he says:

> "State regulations are to be upheld because upon the consideration of all the relevant facts and circumstances it appears that the matter is one which may appropriately be regulated in the interest of the safety, health and well-being of local communities, and which, because of its local character, and practical difficulties involved, may never be adequately dealt with by Congress; because of its local character also there may be wide scope for local regulation without substantially impairing the national interest in the regulation of commerce by a single authority and without materially obstructing the free flow of commerce, which were the principal objects sought to be secured by the Commerce Clause."

308 In conclusion I say this court should not lend its office to such an infringement on local regulation.

I thank you.

The Court: We will take a recess for five minutes.

(A short recess taken.)

Further Argument on Behalf of the Defendants

By Mr. Hodson:

If the Court please, I am speaking for the Yellow Cab Company of Chicago. The Yellow Cab Company, as your Honor knows, is the corporation which has operated Yellow taxicabs in Chicago for a great many years. Its stock is wholly owned by the Chicago Yellow Cab Company.

In my remarks I will make no distinction between the two corporations. I would like to make this statement at the outset, if the Court please: If I should refer exclusively to "Yellow," I do not mean to imply that their position is any different from any of the defendants and particularly any different than the other operating companies, the Checker Taxi and Cab Sales and Parts. Any point I make will be equally applicable to all of those corporations.

Now, despite the language of the complaint in this case, your Honor, and despite the fanfare of
309 monopoly and restraint with which the complaint is embellished, all of the wrongdoing which is charged against the Yellow in this complaint may be summarized down to two ultimate facts.

The first is this: That pursuant to an ordinance passed by the City of Chicago, Yellow surrendered 571 licenses and under that ordinance they received the priority for the same number of licenses if the city should subsequently increase the number of licenses in the city.

The second ultimate fact is that Yellow now buys its taxicabs from Checker Cab Manufacturing Company.

In view of the length of this complaint it may be thought that that statement is an over-simplification but it is not, as can be easily demonstrated by comparing Yellow's business and activities prior to the beginning of the alleged conspiracy with its business and activities at the time of the filing of this complaint.

In 1929, prior to the beginning of the alleged conspiracy, Yellow Cab Company was engaged, as I have said, in the business of operating taxicabs in the city of Chicago and in the city of Chicago alone. Its business is exactly the same today.

310 In 1929 it transported some interstate railroad passengers over the streets of Chicago. It does the same today. In 1929 Yellow did not engage in the same business as Parmelee, that is to say, Yellow did not transport railroad passengers between, exclusively between railroad stations in specially designed motor coaches and pursuant to contracts with carriers. It doesn't do so today. It doesn't do so for the excellent reasons that Mr. Kaufman has stated to your Honor earlier. The point is, however, there is no difference in Yellow's operations in that respect, prior to the alleged conspiracy and today.

In 1929 the City had issued to Yellow 2,350 taxicab licenses. In 1937 Yellow held, according to the complaint, I believe it was, 2,116 licenses. And in 1937, pursuant to the ordinance before mentioned, Yellow surrendered 571 licenses, leaving it with 1,595 licenses. That is the first difference in its position in '29 and its position today.

In 1929, according to the complaint, Yellow purchased its taxicabs from manufacturers other than Checker Cab Manufacturing Company. Since 1929 it has purchased its taxicabs solely from the Manufacturing Company. That is the second difference.

Now, in these respects, Checker and Cab Sales
311 are in the same position. The only difference in their activities between '29 and today is that the Checker holds less licenses and the two companies buy their taxicabs from the Checker Manufacturing Company. Those are the two ultimate facts upon which the charges in this case are based.

The charge that these defendants, Yellow and Checker, have restrained trade in the transportation of interstate railroad passengers between, to and from, Chicago railroad stations is dependent, of course, upon the fact that these operating companies surrendered these licenses to the city. That charge does not state a claim under the Sherman Act for several reasons.

In the first place, if there is any restraint resulting from this reduction, which is the main point I will argue this morning, if there is any restraint, the impact of that restraint is on the taxicab business, as the government admits; and the taxicab business is not interstate commerce. It is intrastate commerce. To call it interstate commerce is to obliterate the historic concept of interstate commerce. It is to ignore the vital facts which Mr. Kaufman has mentioned, and which are set forth in our brief, and it is to fly directly in the face of the Supreme Court's decision in the Knight case, the Stratford case, and a number
312 of others. The taxicab services are obviously, as held by the Supreme Court, independent local services. I won't spend any more time on that point because Mr. Kaufman has dealt with it so thoroughly.

In the second place, these companies did not surrender their licenses pursuant to any combination or conspiracy. As Mr. Kaufman pointed out, they surrendered those licenses in compliance with an ordinance of the City of Chicago, the ordinance of December 22, 1937. I will, however, spend no more time on those two issues since they have been covered.

I want to devote my time to a consideration of this question then: Does the complaint show that these reductions in licenses in any way restrained trade? Of course, I don't need to cite cases to your Honor to prove that it is not every agreement that restrains trade. It is not every agreement which restrains trade that violates the Sherman Act. In the decisions cited in both portions of it, it is clear that an agreement to violate the Sherman Act must have the purpose and the effect of substantially and directly

affecting interstate commerce. It is, therefore, incumbent in a complaint of this nature that the draftsman set forth facts which show that the agreement actually had the effect of restraining interstate trade and commerce.

313 We think the complaint in this case is glaringly deficient in that respect.

Turning to the first charge that these defendants have conspired to restrain the transportation by taxicabs of interstate railroad passengers, that charge obviously is based upon the fact that they each surrendered a substantial number of their licenses.

We would assume, therefore, in looking at this complaint, that it would contain some forthright definite and unequivocal allegations that before surrendering these licenses the defendants had put themselves in a position where they couldn't meet the requirements of the public for taxicabs. We would assume that the complaint would contain an allegation that so many taxicabs were necessary to meet the requirements of the City of Chicago, or to get down to this particular case a certain number of taxicabs were essential to meet the requirements of interstate railroad passengers who upon their arrival in Chicago desired to use a taxicab. Certainly in the absence of any standard such as that the court or no one else can determine whether the reduction in taxicabs, and the reduction in taxicab licenses, had any effect whatsoever on trade let alone restraining it.

There is none, if the court please, in the 26 pages

314 of this complaint, not one allegation of that nature. It can be searched through in its entirety and there is no mention of any facts which would show that this reduction in licenses in any way affected the transportation of interstate railroad passengers.

It seems to us that the necessity for such an allegation is so vital, so apparent, and its omission is so striking that the question naturally arises, well, why didn't the draftsman include it? It is a natural thing to do. We do not have to search for the answer, your Honor. Suppose this complaint had alleged that five thousand or six thousand or some other number of taxicabs were essential to meet the requirements of interstate railroad passengers who desired to use taxicabs; that because of the reduction Yellow and Checker were unable to meet those requirements; and, therefore, trade was restrained. Now, what would be the effect of that allegation? The effect can be very plain-

ly set forth by referring your Honor to the very opening paragraph of the ordinance of December 22, 1937. It reads as follows:

"Whereas, the Public Vehicle License Commissioner has reported the result of investigation of the conditions prevailing in the operation of taxicabs within the city and has determined that public convenience and necessity require that the number of taxicabs within the City of Chicago be reduced to 3,000."

If such an allegation had been put in this complaint, such an essential allegation, the complaint would have immediately shown that the restraints at which this complaint was aimed were restraints flowing from the exercise by the City of Chicago of its police powers.

As Mr. Kaufman has mentioned, this court and the courts of Illinois have sustained the validity of the exercise of powers of the City of Chicago to limit the number of licenses for taxicabs operating on its streets. That is the reason, your Honor, that these essential allegations were left out of this complaint.

Now, of course, it is possible that a reduction in the number of licenses might otherwise restrain trade. At least it is conceivable. Suppose, for example, that Checker and Yellow and other operators had taken advantage of the situation of the reduction in licenses and had agreed at that time to increase the rates to be charged to taxicab passengers and particularly in this case to increase the rates chargeable to the interstate railroad passengers who use taxicabs.

That, of course, would be a restraint of trade. Is there any allegation in this complaint to that effect? There is none, your Honor. There is no allegation in this complaint that these defendants discussed rates; that they agreed upon rates or that rates were increased at all, regardless of who did it. There is no allegation with respect to rates except one. I will mention that in a moment. And why aren't those allegations in? And we come back to the same answer. If such allegations had been placed in the complaint there would be a head-on conflict between those allegations and the power of the City which it not only has but which it has exercised by fixing the rates and charges which may be made by taxicabs to the public generally and to interstate railroad passengers.

May I suggest that we look at that in another way? Suppose, for example, that this court should believe a restraint

did exist with respect to rates and with respect to the number of taxicabs. The normal and customary way of dealing with a restraint of trade, of course, is to chop off the restraint. Now, how can a court chop off such a restraint as we have described without interfering with the City Council in the exercise of its jurisdiction over taxicabs? How
317 could it do so without flying right squarely in the teeth of the ordinances which the city has already passed dealing with those subjects? If there is any other way that this reduction in taxicab licenses could have affected interstate commerce or could have restrained it, I do not know what it is, your Honor. It must be either because there are not sufficient taxicabs and not because something was done with respect to the rates and there is no allegation of that nature in this complaint. True, the government in its brief makes some statements along this line: Why, if it had not been for this conspiracy the appearance of the taxicabs might be better; or the taxicabs might be more comfortable; or perhaps they would have installed a radio-telephone system.

Now, I respectfully submit that no one, considering the facts, could urge that the appearance of the cabs, could urge that the introduction of other comforts could have any effect in restraint of interstate transportation of railroad passengers. Assuming for a minute that they could, is there any allegation in the complaint to this effect? Again, there is none, your Honor. There is no allegation and again the reason is clear. That reason is that in the 1929 ordinance and in the 1934 ordinance, the question of the
318 type and the color and the nature of the equipment used are a matter for the Vehicle License Commissioner. Those are again omitted because to include them would bring this complaint in direct conflict with the powers of the city.

To summarize this point, the complaint omits vital and essential allegations to show that the reduction in the number of licenses in any way restrain trade.

The most anyone can do is to imagine or speculate as to what the effect of that reduction of licenses was upon the taxicab business but the reason for that omission is more significant than the omission itself. The reason is that if those allegations were included it would be clear that the complaint would be directly attacking the police power of the City of Chicago which has been held valid.

So this case ultimately comes down again to not only the insufficiency of the complaint to show restraints but

it comes down to this question in this case, your Honor: Can it attack at one and the same time a valid exercise by a local municipality of its police power and an illicit restraint of trade under the Sherman Act? And the answer obviously is that it cannot and the Sherman Act
319 gives way to the valid exercise by the municipality of its police power.

I say "give way." That is too weak, because, as Mr. Kaufman has pointed out, the Supreme Court has held that the Sherman Act does not include within its reach restraints which inevitably flow from the exercise by a local government of its police power.

I would like to mention one or two other items in the complaint: The complaint charges in addition to the matters I have just discussed, and I am referring to paragraph 19-I:

> "That Checker and Yellow would prevent new operators, including veterans, from entering the cab business in Chicago and vicinity by annually renewing cab licenses for cabs they did not operate and had no intention of operating."

And then in support of that allegation in paragraph 49 of the complaint the draftsman has set forth the number of licenses which were issued to Yellow in each year and the number of taxicabs, maximum number of taxicabs which Yellow operated in each of those years and of course there is a difference. So the complaint urges that trade has been restrained as a result.

In paragraph 53 it is said by reason of such
320 conspiracy Yellow and Checker and Cab Sales have not operated their cabs to the extent necessary to meet the public demand for cab services. I would like to make just a few comments on those paragraphs and I trust, your Honor, that in doing so I will not go outside of the record, except to point out facts which are within the common knowledge.

In the first place, of course, there is a difference between the number of licenses issued and the number of cabs operated. Normally there is a difference because everybody knows that in fleet operations every taxicab is not operated every day of every year. There is the question of maintenance and repairs. There is the question of the seasonal peaks of taxicabs. That, perhaps, is a minor answer in this case because we all know the conditions that have existed during the past several years. We all know and it is

a matter of common knowledge that it was impossible to secure vehicles, new vehicles, to replace the vehicles that were worn out. It was impossible to secure parts. Gasoline was rationed. Tires were difficult to get. This court knows of the work done by the War Production Board, by the Office of Defense Transportation and the War Manpower Commission. We say to the court that we have no apologies to make for that record. We are proud
321 of it. The amazing thing is that we operated as many cabs as we did.

It is not only a matter of public knowledge but it is also a fact that the City Council took that into consideration in 1945 when they renewed the licenses, or renewed the ordinance for a period of five years in order to give these taxicab companies a chance to replenish their fleets.

There are two answers to it, if the Court please. First of all, is there any showing that the number of inoperable cabs in any way restrained the trade of transportation by taxicabs of interstate railroad passengers? We are back to the same point I urged a moment ago. The only way in which a court or anyone else can determine whether it had any effect or any result on that commerce is to guess, imagine or speculate because the complaint is silent. And the very reason why that allegation is of any importance is that we are again back knocking at the door of the City Council because under the ordinances the City Council and the Public Vehicle License Commission has full and plenary authority to deal with the situation. It has nothing to do with the Sherman Act. It has purely to do with local matters, subject to local regulation. That brings us to
322 the second and final charge in the complaint; namely, that Yellow and Checker have violated the Sherman Act because they purchased their requirements of taxicabs from Checker Cab Manufacturing Company.

Now, to us that is a very simple question. We have this situation: Here is Yellow which has been issued 1,575 licenses by the city. It has to get the tools of trade to operate under this license. If Yellow, Checker or both had purchased their taxicab requirements from Ford, from Chrysler or from General Motors we would not have this case. It is only because they bought them from Checker Cab Manufacturing Company, which is an affiliate.

Now, on what possible legal theory can that be considered illicit, be illegal under the Sherman Act? There are only two theories possible, we submit. The first is that the

law prohibits a corporation buying its requirements of a particular product from a manufacturing affiliate. For the reasons and the cases cited by Mr. Kaufman, there is certainly nothing to that point, because the Supreme Court has held such purchases, such affiliations to be perfectly lawful.

The second alternative is that it must be illegal because we held 1575 licenses and Checker held a thousand
323 licenses. If that is the basis of illegality this case is again attacking the City Council for issuing those licenses and can be nothing else.

For the reasons I have mentioned and for the additional reasons stated by Mr. Kaufman, we respectfully submit that the motion dismissing this case should be sustained.

The Court: Does that complete the argument for the defendants?

Mr. Hodson: It does, your Honor.

The Court: Inasmuch as we will not finish this forenoon, I was going to suggest that we recess for lunch now and reconvene again at 1:30, if that is agreeable to all counsel.

Mr. Williams: That is satisfactory.

(Whereupon a recess was taken until 1:30 o'clock p. m.)

324 United States of America, Plaintiff,

vs.

Yellow Cab Company, *et al.*, Defendants.

Before Judge Walter J. La Buy

Friday, October 18, 1946,
1:30 o'clock p. m.

Court met pursuant to adjournment.

Parties present as before.

The Court: Proceed.

Argument on Behalf of Plaintiff

By Mr. Williams:

May it please the Court, I wish to mention at the outset just two general principles that apply to a motion of this kind. The first is, that the complaint should be liberally construed in favor of the plaintiff. And, second, the complaint should not be dismissed unless it appears certain that plaintiff is not entitled to relief under any state of facts which could be proved in support thereof.

Now, we expect to show by our argument that
325 the complaint does clearly state a cause of action, and that we do not need to rely upon either of these rules in our request that this motion of defendants be denied.

We agree with the defendants that the issues are few in number. We cannot agree, however, with their statement of what those issues are. We think the issues are four in number: First, is the commerce alleged to be restrained by the complaint, interstate; second, is the alleged restraint of such a character that it violates the Sherman Act; third, is the alleged restraint exempt from the Sherman Act by the cab ordinance of the City of Chicago; and, four, is the alleged part of the conspiracy to monopolize the sale of cabs to certain large cab operating companies a violation of the Sherman Act.

Now, as to the first issue, is the commerce alleged by the complaint to be restrained, interstate commerce. Our position is that the commerce upon which the alleged conspiracy in restraint of trade operates is a stream af persons and their luggage moving from one state to another through the railroad terminals in the city of Chicago. The only issue to be decided by this court in respect to the interstate commerce issue is where this stream begins and where it ends. Defendants claim that the stream
326 begins at the railroad station for people leaving Chicago to enter upon interstate journeys, and they claim that it must necessarily end at the railroad station for those people who have traveled in interstate commerce and are coming into Chicago.

Now, they also must claim, if they have not expressly admitted it, that with respect to interstate travelers such as individuals who get on the train in New York City and come through Chicago on the way to San Francisco, they must also allege or claim that these individuals break their interstate journey at Chicago. They must allege in support of their position that when the traveler from New York leaves his train at, say, the Central Station in Chicago he then embarks upon an intrastate journey to another station in Chicago; whereupon he again enters interstate commerce. Our position is that such a traveler continues in interstate commerce throughout his trip through Chicago.

Now, let us look at the paragraphs of the complaint and see whether they charge that the restraint is upon the

stream of interstate commerce that I have just described.

Paragraph 18 of the complaint is the charging paragraph and it says that:

"Beginning about January, 1949 and continuing
327 thereafter up to and including the date of filing this complaint, the defendants have been and now are engaged in a combination and conspiracy to restrain and to monopolize interstate trade and commerce."

And then skipping a few words:

"in the business of furnishing cab services for hire in the city of Chicago, Illinois, and its vicinity."

That alleges a restraint upon interstate commerce. Now, what that commerce is was set forth by Paragraphs 4, 5 and 6 of the complaint. It clearly appears, there, despite the statement of counsel this morning, that that commerce is interstate and that that commerce is this constantly moving stream of passengers coming on interstate railroads into the railroad terminals and completing their journey through the use of the cabs operated by defendants.

Paragraph 4 of the complaint states that:

"The city of Chicago, Illinois, is the terminus of a large number of railroads engaged in the transportation of passengers among a majority of the states of the United States."

That alleges interstate commerce. It says that:

328 "A few passengers are transported through Chicago by rail, but it is necessary for the great majority of them, including those traveling from one state to another,"

Again we allege interstate commerce,—

"to get off the trains by which they traveled to Chicago, to go to another station from two city blocks to two miles distant, and to board other trains operated by other railroads. A substantial number of said passengers in interstate commerce use cabs operated by Yellow, Cab Sales, Parmelee, and others, in transporting themselves and their luggage from one station to another as aforesaid."

That paragraph relates to the type of interstate commerce that goes through Chicago, and originates in states outside of Illinois and ends in a state outside of Illinois or it may end within Illinois itself, but it does allege interstate commerce.

The next paragraph is also concerned with interstate commerce. It states:

"Many persons, in the course of travel from their homes, offices, or hotels in Chicago to destinations in other states,"—

That is interstate commerce,—

"commence their travel by using cabs operated by
329 Yellow, Cab Sales, and others to transport themselves and their luggage to railroad stations in Chicago."

Now, that paragraph deals with the beginning of a movement of the stream of interstate commerce. This stream might be likened to a river and the portion of the interstate journey that is carried out by the use of the cabs of defendants is like the tributaries that feed the river. The main stream begins at the railroad station and these people come from all over Chicago in cabs, from their hotels, offices and homes to come together and join the main stream at the station.

The next paragraph deals with incoming commerce. Paragraph 6 states:

"Many persons in the course of travel from points in other states"—

Again, that is interstate commerce,—

"to homes, hotels, and offices in Chicago complete said travel by using cabs operated by Yellow, Cab Sales, and others to transport themselves and their luggage from railroad stations in Chicago to said home, hotels, and offices."

This portion of the stream is somewhat like
330 the delta where the stream branches out into several small branches that carry all the water that comes down the main stream.

The issue with respect to interstate commerce is not as stated by defendants. Counsel this morning stated the issue was whether the entire cab business became interstate in character or was interstate in character; but the issue is whether a part of this cab business is interstate in character. The allegations of the complaint are not directed to restraint upon intrastate commerce. They are directed only to that portion of the cab business which is interstate and a part of the main stream that comes into the railroad station.

Now, at this point I believe I should point out that this movement of persons is not a movement of individuals as dealt with by the complaint; it is a mass movement.

We do not need to say that John Jones when he comes into the station necessarily is going to take a cab or take

the elevated or maybe even walk from the station, but we know that every day in Chicago there is a constant movement of people into the stations and leaving them by cabs and going to the stations by cabs and leaving them on
331 interstate journeys by train. It is this mass movement with which we are concerned in this complaint and not with the movement of any particular individual.

Now, the point of impact of the restraint alleged by the complaint is not on the main stream of commerce. The point of impact is on the tributary and on the streams composing the delta of this stream. But just as if the tributaries of a river were blocked the effect would be felt downstream, in the main stream of commerce in the same fashion restraints imposed in this case as alleged by the complaint upon the tributaries, the tributaries to the stream consisting of the cab phase of the transportation, that restraint is felt throughout the main current of the stream.

Likewise the restraint upon the delta of the river would affect the water or affect the current upstream. In the same way it affects the main stream of commerce here that the defendants have conspired to restrain the cab business in Chicago which deals with the transportation of a part of this interstate stream of commerce.

I would also point out that paragraphs 4, 5 and 6 state that a portion of the stream of commerce which is carried by defendants' cabs, is substantial.

Paragraph 4, which deals with the final station
332 portion of the stream, states that a substantial number of said passengers in interstate commerce use the cabs of Yellow, Cab Sales, and Parmelee.

Paragraphs 5 and 6 state that many persons in their interstate journey use these cabs.

Now, I want to talk about that part of the stream of commerce which is handled by Parmelee. Parmelee is a concern that is not engaged in the general cab business in Chicago. Its business consists, in Chicago at least, although not in other cities, of transporting incoming rail passengers from one station to another. This transportation is carried out pursuant to contracts with the railroads. When the passenger comes in he has his ticket for the Parmelee portion of the trip which he purchases along with the part of his ticket relating to the rail transportation. He gives that ticket up to the Parmelee driver and is carried from one station to another so that he may board a train and leave the City of Chicago.

The COURT: Is the cost of the Parmelee trip included in the original purchase price of the ticket?

Mr. WILLIAMS: Yes, it is.

Now, I listened very carefully this morning, and I carefully scanned the briefs of defendants to see if at any point they made a direct statement they consider
333 Parmelee was not in interstate commerce. I have been unable to find any such statement. I think it is very clear that Parmelee, from the allegations of the complaint, is in interstate commerce. In fact, Parmelee is a part of the terminal facilities of the railroad.

Now, since Parmelee is in interstate commerce defendants' motion should be denied in its entirety because the allegations of the complaint relate particularly to this Parmelee branch of the stream of commerce.

Following Paragraph 18, the general charging paragraph to which I referred earlier, is Paragraph 19. Paragraph 19 gives further information about the precise terms of the conspiracy. It states that:

"The aforesaid combination and conspiracy to restrain and to monopolize has consisted of a continuing agreement and concert of action among the defendants, the substantial terms of which have been that defendants agree:"

I want to emphasize at this point, this states that all the defendants have agreed. It is not a charge that goes to any particular defendant. It says all the defendants have agreed to the nine terms which follow thereafter.

Now, the term to which I want to call the
334 court's attention at this point, is found in Paragraph 19(c), which states:

"Yellow and Cab Sales will not attempt to compete with Parmelee for contracts with railroads or railroad terminal associations to transport passengers and their luggage between railroad stations in Chicago;"

Paragraph 19(d) following the one I have just read, states:

"Parmelee will not compete with Yellow or Cab Sales by seeking to engage, or engaging in the business of transporting passengers for hire in the city of Chicago and its vicinity except by contract with railroads and railroad terminal associations;"

The COURT: At that point, they could not anyway because they are not licensed to do taxicab business.

Mr. WILLIAMS: I am coming to that point right away.

But the point made here is that we charge that these are not individual actions of Yellow or Parmelee; we charge these actions of Yellow, Parmelee and Cab Sales, are pursuant to an agreement among these defendants that they will divide these two streams of commerce; that Parmelee will stay out of the cab business, and that Yellow and
335 Cab Sales will stay out of the contract business between stations. That is, they will not approach the railroads and they will not attempt to get those contracts.

Now, defendants do not contend that these agreements are lawful if the parties are competitors. Their defense is that because of the nature of Parmelee's business and the nature of the business of Yellow and Cab Sales that these businesses are so different that such an agreement, even if it exists, does not violate the law.

That is not in accordance with the decisions under the Sherman Act. The gist of the crime under the Sherman Act is the agreement, and whether or not Parmelee or Yellow and Cab Sales are capable of carrying out that agreement is beside the point. The crime is committed when they have agreed to restrain trade in this fashion, and the authorities for that statement are cited in our brief.

In fact, under the Sherman Act, no overt act need be alleged to state the crime. It is not like the criminal case in that respect, and all we have to do is allege the crime. Paragraphs 18, 19(c) and 19(d) allege an illegal crime and that is a sufficient allegation of the charge.

336 As a matter of fact, however, Parmelee could get into the general taxicab business in Chicago. Parmelee is now in the cab business in New York, Pittsburgh and Minneapolis through its wholly-owned subsidiaries. It has the know-how to operate cabs through its experience there. It has the ability and it is a successful concern in those cities. Now, in Chicago it could get licenses by purchase. There is nothing to keep it from buying licenses from Yellow or from Cab Sales, and one of the allegations of the complaint is that Yellow and Cab Sales have deliberately renewed licenses which they have not used. The complaint also alleges that the City of Chicago took steps to cancel 234 licenses issued to Yellow, and 87 licenses issued to Cab Sales or Checker, because they were not used.

Now, if in the future Cab Sales and Yellow continue not to use those licenses, they may be cancelled and Parmelee may get into the business in that way.

Now, another way is to go to the city and ask the City Council to increase the number of licenses issued in the city. In the city of New York there are 13,000 licensed cabs as alleged in the complaint. In the city of Chi-
337 cago at the present time there are only 3,275. I might point out that 275 of those licenses were issued only after the investigation in this case had begun. There were only 3,000 when this investigation began in March, 1946, and that is alleged in the complaint.

Further, Parmelee was in the cab business in Chicago in 1929 to 1932. At that time it acquired the third largest cab company in the city and operated it for a period of three years, finally merging it with Checker, one of its fellow conspirators, and as charged in the complaint it did that pursuant to the conspiracy. It voluntarily took itself out of the general cab business in Chicago because its fellow conspirators Checker and Yellow were occupying that field.

The COURT: What date do you charge the conspiracy was entered into?

Mr. WILLIAMS: We charge the conspiracy began in January, 1929. That is in Paragraph 18 of the complaint.

Further, Parmelee participated in this conspiracy by helping to bring about the limitation of licenses that was made by the city in 1937.

The complaint charges in Paragraph 43 that it was Parmelee that suggested to Yellow and Checker that the city should issue such an ordinance or that these
338 two concerns should ask the city for such an ordinance. The important point here is that the reduction of the number of cabs in the city of Chicago to 3,000 was not dictated because of the ordinance. The cabs were reduced before the ordinance was ever enacted and before the ordinance was ever thought of.

The complaint alleges that in April of 1937 Checker and Yellow agreed to reduce the number of cabs. At that time Yellow had not for some time used all of its licenses that it had available. In fact, at the end of the year they state in their written contract that 511 licenses of those issued to Yellow were not being used. A part of the consideration for the $320,000 paid by Yellow to Cab Sales and Checker was that they would not go to the city and ask that those 511 licenses be cancelled for non-use as the ordinance permitted them to do.

Certainly as long as Parmelee is a party to the agreement charged by the complaint we cannot expect Parmelee ever to attempt to compete in the general cab business in the city of Chicago. It is bound by its agreement and the purpose of this complaint, among other things, is to break up that agreement and to permit competition to arise between these companies if by their individual choice they chose to compete with each other. At the present
339 time they have been chosen through an agreement not to compete.

Now, there has been some point made by defense counsel of the so-called difference in the cabs used by Parmelee and by Yellow and Cab Sales. They also stated that Yellow and Cab Sales were prevented by the terms of the ordinance from engaging or entering into contracts with the railroads to carry passengers now carried by Parmelee. This is absurd. The ordinance merely requires the cabs to carry passengers to any point in Chicago.

Now, if Yellow, for example, secured a contract with the railroad to carry passengers between stations, it would merely follow its usual practice of having cabs available at those stations to meet trains as they come in. If a passenger got into a cab and presented a ticket that had been sold him by the railroad and say, "I want to go to another railroad station," that cab could take him there without violating any ordinance of the city. If a passenger got into a cab and did not present a ticket and said, "I want to go to the Stevens Hotel," that would not violate any ordinance of the city. There is no difficulty whatsoever with that ordinance. It is purely imaginary.

So the defense of defendants that Parmelee and Cab Sales and Yellow are not competitors must fail
340 because they are not in competition at the present time by reason of the agreement, and they are potential competitors for the business of carrying passengers pursuant to contract with railroads and they are also potential competitors in the general cab business in the city of Chicago.

Now, counsel argued that the railroad stations may lawfully enter into a contract with anyone they please, and he urged this in some defense or justification of the charge of conspiracy which I have been discussing. He misunderstands the charge of the compalint. The charge of the complaint is that these parties have by agreement removed themselves from competing with each other for this rail-

road business. It is not that the railroads have chosen deliberately to give Parmelee all of this business; it is that the railroads have never had an opportunity to give that business to Checker or Cab Sales because neither of these concerns ever approached the railroads. They are barred from doing that by their agreement which is charged in violation of the Sherman Act. It is the railroads that are being hurt by this conspiracy and not the railroads who are causing noncompetition between these companies.

On this ground also the motion of defendants should be denied in its entirety because the complaint
341 charges that all of the defendants have conspired to divide the cab business in Chicago into these two fields and to keep Yellow and Cab Sales from competing with Parmelee, and Parmelee from competing with Yellow and Cab Sales for commerce which, of course, is interstate commerce.

Now, let us look at the portions of the stream of interstate commerce which are carried by Yellow and Cab Sales. That commerce is in three parts. These concerns through their cabs carry interstate travelers from one station to another, between-station commerce. They carry travelers from their homes, offices, and hotels, to stations to carry on their journey in interstate commerce, and they carry incoming interstate passengers to homes, offices and hotels.

Now, the question is whether that portion of the journey carried by cab is a part of the stream of interstate commerce. Now, the only difference between this transportation by cab of Yellow and Cab Sales and Parmelee, is that the fares are paid separately. You will not find the passenger, as with Parmelee, paying a single fare to the railroad and getting a Parmelee transfer at the same time; he pays the fares to the railroad to carry him to the Chicago station and then he pays a separate fare to the cab driver.
342 But this is not a substantial distinction.

As shown by the cases cited in our brief, the determining factor of where the stream of interstate commerce begins and ends is the intent of the passengers engaged in that commerce. Now, it is perfectly clear when a traveler comes into the city of Chicago from New York he has no intention of stopping for any length of time at any railroad station. He comes to the station with one idea and that is to get out of there as soon as possible. They have no hotel facilities. He cannot stay there, he must go on. The temporary break in alighting from the train and boarding

a cab is so slight it cannot possibly break the interstate stream of commerce.

In the Jacksonville Paper case cited in our brief, the Supreme Court expressly held that it is the intent of the party that governs the end point of the stream of interstate commerce. That was a stream of commerce that related to a commodity. The commodities came into the station at Jacksonville by train, and they were unloaded from the railroad car and carried to the warehouse. They were unloaded again in the warehouse and checked and reloaded to go to the customer. And the court drew a distinction between two classes of goods that went into the warehouse.

343 One class of goods that went into the warehouse went into stock. The company operating the warehouse did not know that those goods would go to any particular customer. They were just held as a mass of goods, and then as orders came in they would go out to customers. The court said that the transportation of those goods from the warehouse to the customer is not in interstate commerce, it has been broken at the warehouse.

But there was another class of goods and that class of goods were those that were ordered to fill the need of particular customers. The warehouse knew when it ordered those goods that they would go to, say, Jones & Company. The court held that even though they were held in the warehouse for a period of time, even though they were treated as stock, as long as they had the intention they were to go on to Jones & Company, that delivery from the warehouse to Jones & Company was interstate commerce. The intention of the parties determine where that stream ended. That is our contention in this case.

At this point I might point out again that we are dealing with a mass of individuals, and we are dealing with a mass intent.

Now, defendants say that when a man gets into a

344 cab the driver does not know he is going on an interstate journey. What difference does that make? The companies know and the cab driver knows that of the number of passengers that they take to railroad stations a great percentage are embarking upon an interstate journey and that their cabs are therefore engaged in interstate commerce. They know the same thing about the incoming passengers in Chicago when the cabs pick them up at the stations and take them to other points of destination in the city of Chicago.

This distinction between individual intent and mass intent is very much like an insurance actuarial table. The insurance companies know that out of 1,000 people insured during a certain year a certain number of those people will die. They can even tell you the causes from which they will die with a high degree of accuracy. They don't know what is going to happen to John Jones who is in that class.

In this case it is immaterial what happens to the individual. It is immaterial whether the cab driver knows that his particular passenger is embarking on or is finishing an interstate journey. The important thing is that the company knows that a large portion of those people they take to and from stations, between stations, are engaged in interstate commerce. That is sufficient.

345 Now, in our brief we have cited a number of cases. We have not pointed out that those cases clearly stated that intent was a determining factor. In fact, the cases do not expressly state the intent theory. However, the result of the cases can only be explained by the intent theory because in the cases cited there was no through billing. There was no payment of a single fare for a complete journey. There was the payment of two fares for two journeys, but the court held they were nevertheless one continuous unbroken journey in interstate commerce.

Now, in the Gluek Brewing case cited in our brief, the transfer company in Minneapolis delivered beer to a railroad station as the first step upon the interstate journey. It also delivered beer in pursuance of its contract to local points within the city. It was held the company was engaged in interstate commerce, even though it was paid by the brewery. The only bill of lading that was issued was issued by the railroad after it received the shipment, but the journey began at the time it was picked up by the trucks to go to the station and did not begin at the station.

That is also true of the Dallum case; it is also true of the Monessen Southwestern case. That is a case where the steel company had a wholly-owned
346 subsidiary railroad whose primary business was to move cars into the various works of the plant, but it occasionally took finished products in cars and moved them on the first step of the interstate journey by delivering them to the interstate railroad.

Again there was no single billing. The railroad subsidiary was paid directly by the steel company. There were two fares paid but the court held that it was a single journey in interstate commerce.

I want also to refer to a case which is not cited in our brief but which I called to counsel's attention yesterday—United States against Capitol Transit Company, found in the 325 U. S. 357, decided in 1945 by the Supreme Court. That case dealt with the movement of workers in the District of Columbia from their homes in the District of Columbia across the Virginia state line to their work in the Pentagon Building.

The court held that these workers were engaged in a single interstate journey from the time they boarded the street car or bus at their home in the District of Columbia until they arrived at their point of destination in the State of Virginia, even though they had to dismount from the street car or bus they took near their homes in the
347 District of Columbia and boarded a separate bus or car that took them across the state line. Exactly the same situation as here. A part of the journey they were in interstate carriage, and the balance of the journey the carrier operates between two points in the same state; but the court stated it was one entire interstate journey.

In that case I should point out a single fare was paid for the entire trip. The people in making the trip got a transfer that they delivered to the second carrier.

There is also another case not cited in our brief but which has been called to counsel's attention; that is, Baltimore vs. Settle, decided in 1922 and found in 260 U. S. 166. This case dealt with the shipment of a commodity. A lumber dealer in the city of Cincinnati located near one station within the city limits found that the sum of two fares or two freight rates to his point was cheaper than the through rate. One rate went to another station in the city of Cincinnati and then he had another rate from that station to his station, a very short distance. So he was taking advantage of this fact by having his lumber shipped in carload lots to the first station where it would stay for two or three days and then it would be picked up by
348 train and delivered over to his final destination.

The question in that case was whether it was not an interstate journey or whether the journey within the city limits of the city of Cincinnati was intrastate. The court clearly held that the intention of the parties governed and that it was a single interstate journey and therefore took interstate rates.

And the court said at page 171:

"For neither through billing, uninterrupted movement, continuous possession by the carrier, nor unbroken bulk, is an essential to a through interstate shipment."

And skipping a few words:

"But where it is admitted that the shipment made to the ultimate destination had at all times been intended, these incidents are without legal significance as bearing on the character of the traffic."

Our contention is the intention of the passenger is at all times to leave the railroad station as soon as he can and get to his destination when he takes a cab. Therefore, the interstate stream of commerce is not broken at the station but continues to its destination and throughout the cab portion of the trip.

349 Now, defendants in their reply brief dispute our theory of intent as determining the point at which interstate commerce began and ended.

They cited two cases to support their position; both decisions of the United States Supreme Court. Both cases, however, dealt not with a constantly moving stream of interstate commerce that recurs day after day, such as involved in this case. These cases dealt with the construction of individual contracts entered into by individual passengers with railroads.

In one case, the Mohney, a passenger on a railroad was injured during the interstate trip and the question was whether the federal law or the state law applied. He was traveling on a pass between two such points in the state of Ohio and he was injured during that portion of his trip. His intention, however, was, when he got as far as the pass would take him, to buy another ticket and to continue in interstate commerce.

The court held there that the contract was only one for intrastate because he was injured in that part of the trip and therefore the state law applied. That is quite a different situation from the case we have here where you have a constantly recurring stream of commerce. This

350 is a case of interpreting the contract as between those two parties. We are not a party to any contract. The United States Government is not a party to any contract with these companies, so we have a different question.

The Southern Pacific case is very similar. Again it was a case involving a contract and in that case it involved a

carnival that entered the state of Arizona near Tucson and stayed there two or three or four days and then entered into a separate contract for transportation from Tucson to Phoenix. It stayed at Phoenix two weeks. While it was at Phoenix it negotiated with the railroad for contract to carry it to other points within the state of Arizona, but it finally decided to leave the state. The carnival felt it should have had a through rate because the sum of the intrastate rates were more. The court held that it had to pay the intrastate rate.

Another defense made by the defendants is that the Fair Labor Standards cases and the National Labor Relations cases upon which we rely in our brief, do not apply. They do not have much authority for this point.

One of their cases, the Kirschbaum against Walling, decided by the Supreme Court, they lift a sentence from that case to the effect that while one phase of a business
351 may be within the National Labor Relations Act, another phase may not come within the Sherman law. This is perfectly consistent with our theory. Our theory is that if a phase of business or commerce is within reach of the National Labor Relations Act it is also within reach of the Sherman Act, not a different phase but the same phase.

Now, the Fair Labor Standards Act does not go as far in reaching interstate commerce as does the Sherman Act. The Fair Labor Standards Act was limited by its very terms found in 29 U. S. C. 206, to employees engaged in commerce and in the production of goods for commerce.

The Sherman Act reaches restraints on intrastate trade when those restraints also restrain interstate trade. And that is found in our brief where we cite the case of United States against Darby. It is also found in the Frankfort Distilleries case cited in our brief.

In the Frankfort Distilleries case the restraint was imposed on intrastate but it affected the interstate movement of goods. It also restrained interstate movement. And the court held that it was within reach, the conspiracy was within reach of the Sherman Act.

352 In our brief we cited the Fainblatt case decided by the Supreme Court and found at page 35 of the brief, which states unequivocally that the Sherman Act and the National Labor Relations Act are both exercise of all the powers granted Congress by the commerce clause of the Constitution to regulate interstate commerce.

It is very difficult to understand how the defendants can distinguish between the decisions under the National Labor Relations Act and the Fair Labor Standards Act as to what is interstate commerce. I distinguish between those decisions as to the Sherman Act when the power to regulate commerce, the power of Congress to regulate commerce comes from the same source,—the commerce clause of the Constitution. If that power comes from the same source it must be the same in the case of all three statutes, except in so far as Congress has expressly limited it by the precise language of the statute itself.

Now, we find at page 12 of defendants' reply brief they make a statement in an attempt to get away from these cases cited in our brief, that is completely erroneous.

The statement is that none of the Fair Labor Standards Act and National Relations Act cases cited by plaintiff, and I quote:

353 "None of these cases undertook to decide that the acts under consideration were themselves interstate commerce but only whether they 'affected' interstate commerce."

That statement is completely wrong. A review of the cases cited in our brief shows that they hold, as we said they did, that the transportation involved in this case was in interstate commerce.

The Jacksonville Paper case clearly said that the transportation of goods from the warehouse to the customer where they were destined for those particular customers when ordered, was in interstate commerce.

In the Kirschbaum against Walling case the court said that the elevator operators in the building in which the goods were produced for interstate commerce, the court said that those elevator operators who took the goods up and down their elevators, started and finished the interstate journey of the goods, those operators were engaged in interstate commerce.

In the Gluek case cited in our brief, the court said at page 854:

"The evidence supports the determination that Back is engaged in interstate commerce."

That same statement is found in the Dallum case and the Monessen case, and the Allesandro case,

354 and in two Post Office cases.

Now, as a further defense, defendants contend that the Knight case applies. This case decided in 1904 by the Supreme Court, relates to the cab service operated in the city of New York by the Pennsylvania Railroad.

In our brief we point out that the Supreme Court had taken occasion at several times to state clearly that tax cases, that is, cases determining the power of the state to tax, were limited to the power of the state to tax, and had no relevance to a case such as the one before this court where the issue is the extent of the power of the federal government to regulate. When goods come from one state to another, you cannot cite one as authority for the other. That is what the Supreme Court said.

The defendants have also cited two state decisions in support of their position. These are the Borelli and the Ridley cases; the Borelli case decided in New York and the Ridley case decided by the State of Tennessee. Both of these cases did not see the fallacy in using the Knight case in determining the scope of federal regulation, but they apply the Knight doctrine and they are based on that doctrine; and they ignore the holding of the Supreme
355 Court that the state taxation cases do not mark the boundaries of federal regulation.

Further in the Borelli case the main point of contention was that the plaintiffs involved in that case were not common carriers by railroad, as is required to bring them within the Federal Employer's Liability Act. That act applies only to common carriers by railroad.

Further the facts in the Borelli case are almost identical to those in the Capitol Transit case, and if there is any conflict it has been resolved by the Supreme Court in favor of the position now taken in this case by the government.

The reasoning in the state Ridley case also is strongly relied on by the defendants and is directly opposed to the reasoning of the Supreme Court in the Jacksonville Paper case. The Ridley case held that the interstate commerce ended when the packages coming in by train were unloaded from the train which, of course, is in direct conflict with the Jacksonville Paper case.

We cite many cases in our brief to show that the Sherman Act is an exercise of all the powers that Congress possesses under the commerce clause of the Constitution to reach conspiracies to restrain interstate commerce.
356 Defendants have not tried to controvert that except in very indirect fashion. The only exception that limited the power of Congress in this respect under the Sherman Act, is the express limitation imposed by the Clayton Act and by the Norris-LaGuardia Act that exempts labor unions. The defendants do not contend that they are labor unions.

The power of Congress under the commerce clause is a plenary power which extends throughout the farthest reaches of the current of interstate commerce.

In view of the precedents held by the Supreme Court, the stream of interstate commerce in goods does not end at the railroad terminal but extends to delivery to, and in some cases, from warehouses, when in view of the decisions that the intent of the shipper governs they are clearly applicable to the intent of the passenger as shown in the Capitol case, we think it is clear that the stream of commerce involved in this case extends to the point where the interstate traveler either leaves the cab at the completion of his journey or extends to the point where he begins his interstate journey by entering a cab.

So much for the first issue whether the commerce restraint is interstate.

357 The second issue is whether the alleged restraint is of such a character that it violates the Sherman Act.

Paragraph 18 of the complaint states, which I have already read—states the general charge, and Paragraphs 19(e) to 19(i) state specific terms of the conspiracy.

Paragraph 19(e) states that the defendants agreed to reduce the total number of taxicabs operated in the city of Chicago to 3,000, thereafter to induce the City of Chicago to enact an ordinance reducing the total number of taxicab licenses issued to 3,000, and to oppose and prevent any increase in the number of said taxicabs and licenses above 3,000.

The defendants do not contend that such an agreement is legal. It is clearly unlawful under the decisions of the Sherman Act.

The next paragraph charges that all defendants have agreed that Yellow and Checker will hold 2,595 of the 3,000 licenses issued by the City of Chicago, dividing them 1,595 to Yellow and 1,000 to Checker; that they would secure and divide among themselves, in a ratio of 60 per cent to Yellow and 40 per cent to Checker, any licenses above 3,000 which might be subsequently issued by the City of Chicago.

358 Such an agreement to divide trade and commerce is, of course, illegal under the Sherman Act.

The next paragraph alleges that Checker will lease all of its licenses to Cab Sales for $180 per year per license. This is one of the steps in carrying out the illegal conspiracy.

The next paragraph alleges that Yellow and Cab Sales will not compete with each other by using a make or style of cab other than that manufactured by Checker Cab Manufacturing or by providing more or better service to passengers.

Mr. Hodson made quite a speech this morning arguing where we allege that the contract was a restraint. This paragraph is an answer to that question. It says that they would not compete by using a make or style of cab other than that manufactured by Checker Cab Manufacturing and that they would not compete by providing more or better service to passengers. I do not mean to imply this is the only paragraph but it is one that specifically answers that question.

The next paragraph alleges that the defendants agreed, that Checker and Yellow would prevent new operators, including veterans, from entering the cab business in Chicago and vicinity by annually renewing cab licenses for cabs they did not operate and had no intention of operating.

359 What better means could they find to eliminate the entry of new people into the cab business than to continue to get these licenses so that they could not be turned back to the city and could not be issued to competitors who might break up the monopoly and might compete with the conspirators as alleged in the complaint?

Now, the rest of the following paragraphs of the complaint allege the acts, some of the specific acts and means and agreements and understandings by which this conspiracy was carried out. I will not take time to review them.

In view of these allegations in Paragraph 19, which clearly violate the Sherman Act, we think there is no question but that the second issue must be answered for the government. That is, the character of the restraint alleged is such as to violate the Sherman Act, and the defendants do not in fact seriously contend this.

Now, the third issue is whether that alleged restraint is exempted from the Sherman Act by the cab ordinance of the City of Chicago. The question for the court to decide here is whether the conspiracy charged in the complaint, whether the restraint charged in the complaint and

360 the conspiracy charged, is solely and completely the result of action by the City of Chicago or whether that conspiracy and restraint is in whole or in part a result of independent action by the defendants

Now, if the only restraint charged by the complaint is the result of the action by the City of Chicago, then defendants have a point. But looking at the allegations of the complaint it is clear that the charge is a restraint by reason of the independent action of the defendants, and not by reason of the city. The city is not named a defendant to this complaint. We do not ask any relief to be imposed upon the city. We do not ask this court to compel the city to do anything. The only thing that we ask is that the defendants be deprived of their right to the first 1,071 licenses issued by the city above the number of 3,000. And we ask for this because we feel it is necessary to restore competition to the cab business in Chicago so that interstate travelers may have the benefit of competitive conditions in Chicago; and we also ask for it because that right as claimed by the defendants was acquired pursuant to conspiracy and as a result of conspiracy as alleged by the complaint.

There can be no question of course but that the government might enjoin one party to a contract
361 from taking the benefits under the contract if it is necessary to free interstate commerce from an unlawful restraint. That is an incident of relief that is commonly done.

Now, defendants' position is nothing more or less than that the city ordinance confers immunity upon them from the Sherman Act. The ordinance does not even purport to confer immunity. The terms of the ordinance are simple and prescribe uniform fares, and reduces the number of licenses to 3,000, and it states that the licenses are assignable with the consent of the city. But our complaint alleges that the defendants have agreed that Yellow and Cab Sales will not compete with each other by making use of the style of cab other than that manufactured by Checker Cab Manufacturing or by providing more or better service to passengers. The ordinance says nothing about those things and we allege that trade has been restrained by those companies and it is not the ordinance, and therefore the ordinance would not operate to confer any immunity.

Now, apart from the fact, the law is clear that no city or state can provide conspirators immunity from the Sherman Act.

In Parker v. Brown, which is a case relied upon by the defendants, the court said at page 351:

362 "A state does not give immunity to those who violate the Sherman Act by authorizing them to violate it or by declaring that their action is lawful."

And the defendants are claiming here that the city had given that immunity by authorizing them to violate the Act.

We charge that the conspiracy began in 1929. The first ordinance that reduced the number of licenses was 1937. The 1929 ordinance, which merely required a certificate of necessity for the issuance of additional licenses, was not enacted until several months after we allege this conspiracy began. It is very difficult to see how defendants can support their claim that the only restraint charged by this complaint is that imposed by the city. We charge that the defendants have themselves imposed the restraint by reason of their conspiratorial agreements.

Now, as to the fourth issue and the final one, that is whether the alleged part of the conspiracy to monopolize the sale of cabs to certain large cab operating companies, is a violation of the Sherman Act, I want to point out right now that Mr. Kaufman was incorrect this morning when he stated that the charge of the complaint is two con-
363 spiracies. We charge only one. We charge a single conspiracy with two phases. One phase, the conspiracy to monopolize and restrain interstate trade and commerce in the business of furnishing cab services in the city of Chicago; and the other phase is a conspiracy to restrain interstate trade and commerce in the sale of motor vehicles for use as cabs, to principal cab-operating companies in Chicago, Pittsburgh, New York and Minneapolis. It is a single conspiracy.

Further the charge is not merely that the Checker Cab Manufacturing Company controls the purchases of subsidiaries. The argument of defendants assumes that the only proof that can be submitted under the charge of the complaint is that there is legitimate control of the subsidiaries and that there is nothing more than a legitimate situation. That can only be determined upon trial.

Let us look at the allegations of the complaint with respect to the second phase of the conspiracy.

Paragraph 19(a) alleges that all the defendants agreed to control the operation, and the purchase, of motor vehicles for use as cabs, by the principal cab-operating companies in Chicago, New York, Pittsburgh and Minneapolis.

364 Paragraph 19(b) alleges that all defendants agreed that each such operating company will purchase and use as cabs only motor vehicles manufactured by the

Checker Cab Manufacturing Company, and will not purchase for such use, or use, any motor vehicles made by other cab or automobile manufacturers.

The complaint alleges that this was carried out and that since 1929 Yellow has not purchased any cabs other than from the Checker Manufacturing Company; that since control of Checker was acquired by Cab Sales it has not purchased any cabs except from the Checker Cab Manufacturing Company. The conspiracy has been successful.

We also allege in Paragraph 20, which recites the beginning of the conspiracy, that is by merging the principal cab-operating companies into Parmelee, that one of the principal purposes of the proposed merger was to insure that these cab-operating companies would thereafter purchase all of their motor vehicles for use as cabs from Checker Cab Manufacturing Company and would not buy them from competitors of the Checker Cab Manufacturing Company. This plan of merger was thereafter carried out. The complaint does not allege innocent motives; it alleges illegal motives.

Paragraph 29 and some of the subsequent paragraphs of the complaint show how this portion of the
365 conspiracy operated, and they also show how it is integrated with the conspiracy to monopolize the cab business in Chicago itself. These paragraphs show how the Yellow Cab Company was milked of many of its assets by reason of the conspiracy. It was shown in this fashion.

Paragraph 29 recites the management contracts entered into by Yellow with a subsidiary, later taken over by Parmelee and still held by Parmelee, by which Yellow agreed not to make any purchases for more than $500 without the consent of the manager, now Parmelee. They were thus prevented from buying any cabs other than from Checker Cab Manufacturing Company.

Further, at the beginning, Yellow paid a fee of $50,000 for the privilege of abrogating the right to decide how to run its own business. That was the only fee paid to Parmelee. The complaint alleges that fee has been changed but the complaint does not state what the present fee is. But that excessive fee paid for nothing could only have been collected by reason of the lack of competition in Chicago. If there had been competition in the cab business in Chicago Yellow would not have been able to raise the funds to devote to that kind of a proceeding.

366 Further we find in Paragraph 33 of the complaint that shortly after Parmelee was organized, the conspirators formed a dummy corporation for the purpose of using it as a conduit to cover the payment by Yellow of $95,000 to Parmelee. It was ostensibly paid as commission to the dummy for making a sale of 1,000 cabs to Yellow. Now except for this conspiracy, Yellow unquestionably would have been able to buy directly from the Checker Cab Manufacturing Company and eliminate this expenditure of $95,000. But because of the conspiracy in Chicago it was able to pay the fund; there was no competition.

Further we find that alleged by Paragraphs 35 and 36 that the sum of $700,000 was loaned by Yellow to Cab Sales, one of the conspirators, for the purpose of financing the acquisition of Checker by Cab Sales. Checker at that time was the principal competitor of Yellow in the city of Chicago. The complaint also alleges that this loan was defaulted; that thereupon Yellow extended the due date of the payment.

In 1938 $320,000 of this amount, almost that sum was in effect given up by Yellow again for nothing. The avowed purpose of this payment was to induce Checker to give up 500 licenses and to thus bring into effect the 1937 ordinance of the City of Chicago.

367 In fact, however, as alleged by the complaint, Checker was not then operating these five hundred cabs. It was not using these 500 licenses; it was using only 164 of them. The rest of the cabs had been withdrawn from service pursuant to an agreement with Yellow which was entered into in 1937 before there was any suggestion of an ordinance cutting down the number of cabs.

Under this first agreement Yellow agreed to pay Checker one-half of the revenue lost by Checker in removing these cabs from service.

There is another fact that shows how the phases of the conspiracy dealing with the exclusive sale of cabs fits into the other phase. Paragraphs 49 and 50 of the complaint allege that Yellow and Cab Sales operated less cabs than the licenses possessed by them. Yellow operated a maximum of only 1100 cabs, having licenses numbering 1,595 during 1945. The complaint also alleges that during the period of 1945 Yellow had 145 cabs in dead storage for which they took out licenses, knowing that not a single one of those cabs could ever go on the street during that year.

In January of 1946 the City of Chicago threatened to cancel 234 licenses of Yellow and 87 of Checker because they were not being used. These concerns then went into court and sought to enjoin the city from cancelling
368 these licenses, and in fact were successful. And they told the court they were unable to buy additional cabs, but the complaint alleges that this was not true. It alleges that they could have bought those cabs except that they had agreed under this conspiracy to buy them only from Checker Cab Manufacturing Company. And Checker Cab Manufacturing Company was not manufacturing at that time. The two phases of the conspiracy are integrated and fitted together.

Now, defendants refer to the Paramount case as holding that there was no monopoly in the motion picture distributor business. But this Paramount case has no application to this case. The court held in the Paramount case with respect to the refusal to divorce the motion picture producers from the motion picture exhibitors, saying that that relief was not necessary to bring competition into the industry. It found, however, that as charged by the government the parties had engaged in a conspiracy to restrain trade and to monopolize it. It was purely a question of relief in that case. Here we are dealing with a question of substance. The Paramount case is, therefore, no authority for the point cited by the defendant.

Defendants misconstrue the complaint when they say that only ten per cent of all sales of licensed
369 cabs are embraced in the alleged conspiracy to monopolize. They fail to distinguish between interstate commerce for the purpose of jurisdiction of the court and interstate commerce for the purpose of determining the amount of commerce restrained. It is necessary to have interstate commerce for the purpose of jurisdiction but, as pointed out in our brief, the amount of restraint is immaterial. So whether ten per cent has been the subject of this conspiracy to restrain and monopolize does not bear on whether a crime is charged. That results in part from the language of the charging paragraph. The charging paragraph of the complaint does not allege a combination and conspiracy to restrain and monopolize trade and commerce in the sale of motor vehicles for cabs throughout the United States. So that the ten per cent was not relevant. We charge only a conspiracy to monopolize trade and commerce to certain companies. With respect to those companies it alleges one hundred per cent monopoly, and

by this limitation of the companies the ten per cent becomes immaterial except as to the question of the jurisdiction of the court.

Defendants misconstrue the point for which the Klearflax case was cited. It was cited with respect to this point I have just mentioned. In the Klearflax case the
370 question was whether it was unlawful for the Klearflax company to attempt to monopolize one hundred per cent of the business of a single customer, just as in this case we are dealing with the business of a few companies, and there we are dealing with the business of a single customer. In that case the customer was the United States of America but the company had a lot of other customers. In that case it held that it could be unlawful; in fact it held that it was unlawful to attempt to monopolize the sales to a single customer. That again was one hundred per cent monopoly of those sales just as in this case the attempt to monopolize was one hundred per cent monopoly of the sales to a certain company.

It makes no difference whether Klearflax had a monopoly that was merely a means by which they carried it out. It had a monopoly of all that business throughout the United States, and that monopoly which was deemed lawful by the cases was not questioned by the government, and was merely a means they used to exert pressure in their attempt to monopolize sales to a single customer.

In short, the complaint in this case charges in respect to the second phase of the conspiracy that defendants have by conspiracy excluded all other manufacturers of cabs from the opportunity of competing among themselves and
371 with Checker Cab Manufacturing Company in the sale of cabs to certain cab-operating companies constituting an important segment of industry.

It might be pointed out that since all of the licensed cabs in the city of Pittsburgh are operated by Parmelee through its subsidiary, they have 100 per cent monopoly of the sale of cabs in the city of Pittsburgh. There is also a 79 per cent monopoly in the sale of cabs in Chicago and 58 per cent in Minneapolis.

Defendants have stated that what the complaint alleges is nothing more than a simple integrated concern. They overlook the fact that the complaint alleges a conspiracy to do the things alleged. It alleges that all of these parties agreed to do it. It does not allege that a single concern has done something. It is the agreement that is the crime.

Under this complaint proof can be offered to the Court, and it will be offered, to show that the integration which defendants point to was brought about by the conspiracy and as a result of the conspiracy, and that the integration was used by the conspiracy for the unlawful ends charged in the complaint.

Now, in conclusion, I believe that we have demonstrated that the commerce alleged to be restrained by the complaint is interstate. It is this constant moving stream of
372 interstate commerce that does not end at the railroad station, but which consists of both incoming commerce and outgoing commerce from the stations.

With respect to the Parmelee branch of the commerce, it is unquestionably interstate in character.

As to the second issue, the restraints alleged in the complaint are of the character that violate the Sherman Act.

With respect to the third issue, the restraint alleged by the complaint is not any restraint imposed by the City of Chicago; it is the restraint imposed by the agreement and action of the defendant conspirators and is not, therefore, exempt from the Sherman Act by reason of the ordinance of the City of Chicago.

And, lastly, the alleged part of the conspiracy to monopolize the sale of cabs to certain large operating companies does charge a violation of the Sherman Act.

We ask the court to deny the motion of defendants from the bench and to require defendants to answer the complaint within twenty days.

The Court: Do the defendants wish to reply?

Mr. Kaufman: If your Honor please, we feel that your Honor has been very patient in this case. There is no purpose in pointing out the inadequacies of Mr.
373 Williams' argument. I think they have been covered in the argument this morning and in the briefs.

I just want to point out to your Honor one thing, the theory that is offered in Mr. Williams' argument with respect to the claim of interstate commerce on behalf of the operating companies in Chicago. He indicated almost a concession that the thing that puts them into interstate commerce was by reason of mass intention of travelers using their cabs to get from one station to another, and that changed the character of the business of the company. We do not believe, as we have argued this morning, that that is sound; that is any more than the character of an interstate passenger business being changed by reason of the activity of a local operation. That is entirely a new theory and it

departs both from the complaint and his brief and we insist that it almost demonstrates that the argument made this morning on the question of interstate commerce is sound.

The COURT: Do you wish to add anything?

Mr. HOUSON: I think our argument this morning, your Honor, and the briefs, cover the issues raised.

The COURT: Very well. The Court will take the motion under advisement and counsel will receive a written memorandum from the Court of its decision.

374 Reporter's Certificate to foregoing transcript omitted in printing.

1 In the District Court of the United States
For the Northern District of Illinois
Eastern Division

No. 46 C 1339

UNITED STATES OF AMERICA, PLAINTIFF,

vs.

YELLOW CAB COMPANY; CHICAGO YELLOW CAB COMPANY, INC.; PARMELEE TRANSPORTATION COMPANY; CAB SALES AND PARTS CORPORATION; CHECKER TAXI COMPANY; CHECKER CAB MANUFACTURING CORPORATION; AND MORRIS MARKIN, DEFENDANTS.

Reporter's Transcript of Trial Proceedings—Filed Nov. 1, 1948.

Transcript of proceedings had in the above-entitled cause, before the Hon. Walter J. LaBuy, one of the judges of said court, in his courtroom in the United States Court House at Chicago, Illinois, commencing on the 17th day of May, A. D. 1948, at 10 o'clock a. m.

APPEARANCES:

Mr. Willis L. Hotchkiss, and Mr. Melville C. Williams, Special Assistants to the Attorney General, appeared for plaintiff, United States of America;

2 Messrs. Kaufman, Gallop, Climenko, Gould & Lynton, and Messrs. Winston, Strawn & Shaw, Attorneys for defendants Checker Cab Manufacturing Corporation and Morris Markin, by Mr. Samuel H. Kaufman, (New York) Mr. Harold S. Lynton, (New York) Mr. Jack M. Ginsberg, (New York) Mr. Jesse Climenko, (New York).

Messrs. Kirkland, Fleming, Green, Martin & Ellis, Attorneys for defendants Yellow Cab Co. and Chicago Yellow Cab Co. Inc.

Messrs. Ringer, Rheinwald & Sostrin, Attorneys for defendant Parmelee Transportation Company, by Mr. Charles P. G. Fuller, (New York) Mr. Philip E. Ringer.

Messrs. Jesmer & Jesmer, Attorneys for defendants Checker Taxi Company, and Cab Sales & Parts Corporation, by Mr. Julius Jesmer.

3 The Clerk: United States v. Yellow Cab Company, *et al.*

The Court: Are both sides ready?

Mr. Hotchkiss: Yes, your Honor.

The Court: How long will it take?

Mr. Hotchkiss: We hope the Government's presentation of the case will be concluded by the end of the week.

The Court: You estimate then a week?

Mr. Hotchkiss: Yes.

The Court: How long will the defense take?

Mr. Lynton: I would say ten days to two weeks.

The Court: It may be a three weeks case.

Mr. Lynton: Yes.

Mr. Williams: Before we proceed, your Honor, I would like to move the admission of some New York attorneys, Mr. Ginsberg, Mr. Kaufman and Mr. Lynton.

The Court: Let us get them identified. Who is Mr. Kaufman?

Mr. Williams: This is Mr. Kaufman, and Mr. Ginsberg, and Mr. Lynton. They have all been admitted in the New York Bar.

The Court: Three of them.

Mr. Williams: Three from Mr. Kaufman's office.

4 The Court: All three are admitted.

Mr. Williams: I would like to move the admission of Charles P. G. Fuller of New York for the purpose of this trial.

The Court: Mr. Fuller is admitted for the purpose of this trial.

You may proceed.

Opening Statement

Mr. Hotchkiss: May it please the Court, some time ago your Honor requested counsel for the parties to this case to get together and attempt to work out ways and means of expediting the trial of this cause.

All antitrust cases apparently involves rather major problems with respect to the evidence that is presented because ordinarily such evidence is so voluminous.

I am glad to report at this time that counsel for both sides have gotten together in accordance with the Court's instructions and have worked out in detail many means for expediting the trial of this case.

The Government has dealt in the main with Mr. Kaufman, Mr. Lynton and Mr. Ginsberg. They have been most cooperative in working out these understandings.

At the outset, I wish to say that most of the Government's proof will be documentary in character. The Government, some time ago, served on the defense requests for admissions as to the authenticity of a large number of documents which the Government might use during the course of the trial.

Each of the documents which was so served upon the defendants with the request of authenticity was marked for the purpose of identification. The defendants have made numerous admissions concerning the authenticity of these documents.

I might say that I am advised by defense attorneys that in general they are going to raise no question concerning the authenticity of the documents which the Government will offer in evidence. They, of course, retain their full right to object to the documents on other substantive grounds.

The Government has selected the documents which it intends to offer in evidence, and has arranged those documents in the sequence in which it intends to offer them and has numbered them for the purpose of identification. They have been numbered thusly as Government's Exhibits 1 to 459, inclusive.

I point here to the documents which have thus been numbered. The defendants have copies of all of these documents. At the moment, however, they do not have these documents organized and arranged in the sequence in which the Government expects to introduce them.

The Government has prepared for that purpose a check list showing the numbers on these documents seriatim, and putting alongside of that number the identification number which was used in connection with securing the requests for admissions as to authenticity, and using this, the attorneys for the defendants can promptly and speedily arrange a set of documents which will be in the sequence in which the Government intends to tender them during the course of the trial.

Now, many of the documents which the Government will tender during the course of the trial are rather lengthy and

voluminous, and it will not be necessary for the Government to rely on the whole document, although the whole document will be offered in evidence. The Government is going to rely in the main on excerpts from these very voluminous documents.

7 The Court: Do I understand you have 459 of those?

Mr. Hotchkiss: 459 documents, I regret to say, your Honor.

Now, in order to make the course of the trial as easy as possible for all parties concerned, and for the Court, the Government has prepared mimeographed excerpts from those documents; in other words, has set up in, I might say, book form, first of all a description of the documents, a very brief description of each document, followed in mimeograph form by the excerpt from that document on which the Government is going to rely and read to the Court. It is the intention of the Government to provide the Court with one set.

The Court: Will you hand it to the Clerk, please?

Mr. Hotchkiss: And also to provide defense counsel with the same set.

I might explain, your Honor, that at this moment defendants' counsel are provided in advance with virtually the whole of the Government's evidence. In other words, if the Court will glance at this volume just beyond the index, you will note that there is a heading there, "Description of Exhibits Tendered in Evidence by the Plaintiff

8 together with Excerpts from such Exhibits."

The Court: On what page?

Mr. Hotchkiss: That is on page 1, just beyond the index, your Honor. There is first a complete index of the documents, and at the bottom of that page, which is numbered Roman I, then proceeding through the index, there is a table of certain of the abbreviations.

If you will refer to the pages, that will help you; then proceeding, your Honor, through pages numbered Roman I through VIII, and the page beyond that is not numbered, but is headed, "Abbreviations", and the next page is number 1.

I regret to say that the typist did not mark it at the bottom.

The Court: All right, followed by number 2.

Mr. Hotchkiss: Followed by number 2. The Court will note that there is listed there marked for purposes of identification, Government's Exhibit No. 1.

9 The Court: That is on what page?

Mr. Hotchkiss: That is on page 1, toward the top of the page.

The Court: Yes, I see it. Government's Exhibit 1,

Mr. Hotchkiss: Now, following that, in parenthesis, is a brief description of the document. In other words, it is a document dated January 25, 1929 and consists of the minutes of the directors' meeting of C. C. M.—that is the defendant Checker Cab Manufacturing Company—held at 165 Broadway in New York.

And then, after that, comes the excerpt from the physical document.

The Court: What page is that on?

Mr. Hotchkiss: That is still on page 1, and proceeding over to page 2.

The Court: Proceed.

Mr. Hotchkiss: Now, I wish at this time to summarize briefly what the government expects to prove during the course of this trial, and in doing this I wish to refer to the index which accompanies this volume. That is page 1 of the index, your Honor.

10 The Court will notice that the first section of that index refers to the material dealing with the opening stage of the conspiracy. I want to discuss with reference to each of these sections the general matters which the government expects to prove, so that the Court may have somewhat of a bird's eye view of the government's case prior to the time we start tendering the evidence.

The conspiracy in this case, as alleged by the government in the complaint, began in the early part of 1929. At that time the Checker Cab Manufacturing Company, which is one of the defendants in this cause, was engaged in the manufacture of motor vehicles for use as taxicabs. It had its plant in Kalamazoo, Michigan, and from that plant shipped automobiles in interstate trade and commerce to customers located in various parts of the country.

The President of the defendant Checker Cab Manufacturing Company was a man named Morris Markin. He also is a defendant in this case. Morris Markin is regarded by the government as being the mainspring, the moving factor in this conspiracy.

11 Very early in 1929, Morris Markin, the Checker Cab Manufacturing Company and certain associates of Morris Markin, embarked on a program which had a certain definite pattern in mind and certain clear-cut ob-

jectives. It was the plan of this group to organize a holding company. They organized the holding company, the Parmelee Transportation Company. That is one of the defendants in this case.

The purpose of the organization of the Parmelee Transportation Company was to create an agency which would secure control of the stocks of numerous taxicab operating companies throughout the country and secure sufficient of that stock to give the Parmelee Transportation Company control of the operating and fiscal policies of those companies.

Secondly, the objective, the primary objective in so far as the Checker Cab Manufacturing Company was concerned, was that the Parmelee Transportation Company would see to it that all of these controlled operating companies would give all of their business for taxicabs in the Checker Cab Manufacturing Company, which I will hereafter refer to by its abbreviated title of C. C. M.

12 In this manner, Parmelee controlling the operating companies and their buying practices, C. C. M. could secure a monopoly on the sale of cabs to those operating companies which were controlled by Parmelee.

The plan went into effect, and in April or about April of 1929 a number of things happened rather simultaneously; first, the defendant Parmelee was organized. Immediately it acquired the stocks of three major taxicab companies in this country. It acquired 68 per cent of the stock of the Yellow Taxi Company of New York. Yellow Taxi Company was one of the two largest, perhaps the largest, cab operating company in that city, operating in 1929 something like 2,000 cabs.

Parmelee also acquired 96 per cent of the stock of a company known then as The Parmelee Company.

I want to distinguish that organization, The Parmelee Company, the acquired company, from the defendant Parmelee Transportation Company. They were at that time two separate organizations. The acquired Parmelee was engaged in business in Chicago. It was engaged

13 through the use of coaches in transporting in interstate trade and commerce passengers from one railroad station in Chicago to another. The passengers so transported had purchased their railroad tickets from the railroads, and these tickets had attached to them a tab entitling the railroad passenger to transportation from one station to another by means of these Parmelee coaches. Not

only the passenger, but also his luggage could be transported that way.

Parmelee secured at that time control also of 26 per cent of the stock of the Chicago Yellow Cab Company. The Chicago Yellow Cab Company does not and did not then operate any taxicabs. It was a holding company, and it held all of the stock of another company known as the Yellow Taxi Company. Both Chicago Yellow, the holding company, and Yellow, the subsidiaries, are named as defendants in this case.

Chicago Yellow's operating subsidiary, Yellow, was the largest taxicab company in Chicago. At that time it operated something like 2,350 cabs. It was an exceedingly profitable venture, though its profits, of course, were
14 paid over to its parent company, the Chicago Yellow Cab Company.

Simultaneously with accomplishing these three acquisitions the defendant Parmelee with the approval, of course, of Markin and the Cab Manufacturing Company, C. C. M., organized a subsidiary for Parmelee.

We will find during the course of this trial that there are many subsidiaries and subsidiaries. This subsidiary which was organized for Parmelee also simultaneously with the organization of Parmelee itself was called The Transportation Management Corporation, and it was set up for the purpose of providing an agency which would manage these acquired companies.

The first thing that was done by The Transportation Management Corporation, with the approval of Markin and C. C. M., was to hire certain employees. First, they hired a man by the name of Ernest Miller, who had been the president of the New York Yellow Cab Company, the acquired company, as a general manager of this Transportation Management Corporation. He was hired at the stipend of $50,000 a year.

15 At the same time this Transportation Management Corporation entered into a contract with Morris Markin under which Markin was hired as an adviser for this Management Company. Mr. Markin was hired at the stipend of $25,000 a year, and the contract specifically provided in substance that he need devote none of his time to the activities of the company which he was to advise.

Immediately on the three companies being acquired and this management corporation being established and Miller and Markin being employed in the one case as general

manager of the management company and in the other case as adviser for the management company, the management company proceeded to enter into management contracts with the three acquired companies, the New York Yellow, The Parmelee Company which operated in interstate commerce in this city, and the Yellow Cab Company which operated the cabs here.

I won't go into detail in discussing those management contracts. They are fascinating documents, however, and not the least significant of the provisions of those
16 documents are those provisions under which the operating companies, the controlled companies, could not make any expenditure in an amount exceeding $500 without first securing the permission and authorization of the management company.

The management company was furthermore given the power to hire and fire all employees of the controlled companies other than the officers. Through the management company and through the management contracts, Parmelee and its subsidiaries were enabled at the outset to secure control of the fiscal operations of the controlled companies and to insure that all of their orders for cabs would go to the Checker Cab Manufacturing Company and to insure that no other manufacturer of cabs could have access to the market represented by, at that time, the three companies.

17 Hardly had the initial page of the program been completed than Parmelee moved out into wider fields. It moved down into Pittsburgh.

There were three cab companies in Pittsburgh. It took over the three cab companies and through those acquisitions acquired a monopoly, almost a one hundred percent monopoly, of the cabs operating in Pittsburgh. As to those companies in Pittsburgh they too were required to buy their cabs from C. C. M. exclusively.

Parmelee moved into Minneapolis and acquired a cab company there which give Parmelee control of about close to half of the cabs in Minneapolis.

Then there developed a rather interesting series of transactions which ended in Parmelee securing control of a second large cab operating company in New York. Not only did Parmelee secure control of this company which through its subsidiaries operated something over two thousand cabs, but in the transaction the Checker Cab Manufacturing Company was enabled to secure a majority of the stock of Parmelee.

18 It was done briefly in this manner: Markin and his associates secured control of a majority of the stock of Motor Cab Transportation Company of New York. They then sold that stock to the Checker Cab Manufacturing Company, defendant, the manufacturer of cabs. Checker Cab Manufacturing Company then sold the stock to Parmelee. It was one of these simultaneous transactions, or almost simultaneous transactions. And the Checker Cab, in selling the stock to Parmelee, secured in Parmelee a majority interest in the common stock of that company, and from that time, which was I believe in about 1930, to the present, Checker Cab Manufacturing Company has for practical purposes treated Parmelee as a wholly owned subsidiary of C. C. M. and has controlled its policies.

I shall speak of the Parmelee group, and when I speak of the Parmelee group I wish the Court to understand I am speaking of Parmelee, Cab Manufacturing and Markin. Those are the persons and organizations whom the Government considers to be in this controlling group. They very early decided that it was necessary for them to secure a larger percentage of the cab business of Chicago.

19 At the time Parmelee secured the 26 percent stock in Chicago Yellow, Yellow was the largest cab company here, having 2350 cabs. There were two other major cab companies. One was the DeLuxe, operating about 400 cabs, and the other was the Checker Cab Company, operating about 1750.

The Parmelee group determined to secure control of those companies as a minimum in Chicago. They knew that because of the status of the Chicago ordinances if they secured control of these two additional cab companies that control would carry with it control of the licenses which had been granted to those companies to operate in Chicago, and that control of the licenses would effectively prevent any outside company from coming into Chicago, and if they could keep outside companies from coming into Chicago the Parmelee interstation transportation business would be protected from competition. And, furthermore, the C. C. M. business in the sale of cabs to these operating companies in Chicago would likewise be protected.

20 The first step in the carrying out of the program to acquire control of the operating companies in Chicago after securing control of Yellow and its parent was through the acquiring control of the DeLuxe Motor Cab Company. Markin first of all secured a majori-

ty of the stock of that company and then transferred it to a specially organized and wholly owned subsidiary of Parmelee.

21 Later on, DeLuxe was merged with another company known as the Chicago Cab Company, and with that merger was brought in a number of independent cab operating companies.

Later on, the Chicago Cab Company was merged into Checker.

Now, the evidence will show that the Parmelee group was faced with a little more difficulty in securing control over the Checker Taxi Company, which is the second largest in Chicago.

For one thing, there had been litigation between C. C. M. and the Checker Company for a good many years.

In 1930, however, with the assistance of Yellow, the principal competitor of Checker, and which was controlled by Parmelee, with the assistance of that company, this litigation between C. C. M. and Checker Cab Company was settled.

Interestingly enough, the primary feature of that settlement agreement was that the Checker Cab Company was required for a period of five years to purchase its cabs exclusively from C. C. M. and no other company, and

22 Checker Cab Company agreed that its drivers would buy only Checker cabs manufactured by the Checker Cab Manufacturing Company.

Interestingly enough, in that contract there is a provision under which C. C. M. agrees that it will enter into a contract with the DeLuxe Company, which had already been acquired, under which DeLuxe will also be required to buy its cabs exclusively from C. C. M.

Under the first part of this settlement agreement, the Parmelee group, or I should say in this case, primarily, Mr. Markin and his associates, organized a new company known as the Cab Sales and Parts Corporation. It is a defendant in this action.

Now, at the outset, Cab Sales had only one ostensible function. It was organized primarily to sell cabs to Checker under this settlement agreement, under which Checker had agreed it would buy its cabs exclusively from C. C. M., but it was to buy them through the channel of this new company which had been set up, Cab Sales. It was to buy from that company at $2,350, something like that,

23 and Cab Sales in turn was to buy its cabs from C. C. M., the manufacturing company, at around $1900.

About a year later, a year after this settlement was reached, Cab Sales bought a majority of the stock in Checker. As a matter of fact, they bought about 97 percent.

Now, that is a very significant transaction, because Cab Sales did not have any money to buy the stock. Parmelee at the time was in financial difficulties, having a great deal of difficulty to keep going. Checker Cab Manufacturing apparently did not have the spare cash to finance this acquisition of the stock of the Checker Cab. Where did the money come from?

The evidence will show that the money to enable Cab Sales, which was an instrument of Markin and his associates, to enable that company to acquire the stock in Checker came from Checker's principal competitor, Yellow.

The COURT: The court will recess at this point for fifteen minutes.

Mr. HOTCHKISS: Very well.

(Recess taken.)

24 The COURT: Proceed, please.

Mr. HOTCHKISS: Before the recess, your Honor, I stated that the defendant Cab Sales Company, which was wholly owned by the defendant Markin and certain associates of his, had purchased 97 percent of the stock of Checker Taxi Cab Company in Chicago. As apparently the other defendants in the case did not have the finances to handle this deal; Yellow provided the money to enable Cab Sales to buy this stock in Yellow's competitor.

Now, the loan from Yellow was not made directly. It was made by indirection, as is the situation in so many things that happened in this case. They happened not directly, but by indirection.

Chicago Yellow had a subsidiary called the Benzolene Company. This subsidiary was engaged in the business of buying gasoline and selling it principally to Chicago's Yellow's subsidiary, Yellow.

So Cab Sales technically borrowed the money needed to buy one block of stock from Benzolene. Benzolene, Chicago Yellow's subsidiary, did not have the money.

25 So it turned around and borrowed the money from Yellow and paid it over to Cab Sales, and they bought this stock. That gave Cab Sales control of slightly over one half of the stock of Checker. Cab Sales then borrowed another block of money, I think about two hundred thou-

sand dollars, from an affiliate of Yellow, and there again the affiliate of Yellow did not have the money. So it borrowed the money from Yellow to pay to Cab Sales to buy this stock.

The upshot of it was that Cab Sales had full control thereafter of the Checker Cab Manufacturing Company, and Checker Cab bought from that time on all of its cabs from the Checker Cab Manufacturing Company.

As part of the deal under which Cab Sales borrowed this money indirectly from Yellow, Cab Sales entered into a three-cornered agreement under which it agreed to sell gasoline, lubricating oil and similar supplies to Checker, the cab operating company here.

Checker agrees in turn to buy all of its gasoline, oil and supplies from Cab Sales which at the time had no
26 gasoline so far as the Government has been able to ascertain, and had no storage tanks. Cab Sales then made an agreement with Benzolene under which Benzolene agreed to supply to Checker all of Checker's needs of gasoline, lubricating oil and similar supplies, and, in effect, to give Cab Sales a commission on the gasoline which was sold to Checker. Cab Sales in turn was to apply this commission on the interest and on the principal of this loan which had been floated indirectly through Yellow.

So we have the situation in which Checker was in fact to pay off the loan which Cab Sales had contracted to buy Checker's stock.

Proceeding on with this section of the acquisition of Cab Sales of control over Checker, we find that thereafter Cab Sales seemed to have no difficulty in paying off the principal and interest on this loan.

We also find that Chicago Yellow and Yellow and Benzolene were exceedingly generous in permitting defaults on the repayment of the loan and in extending the period for the repayment and in reducing the interest rate. The interest rate started at six percent and wound up, I
27 think it was, 3 or 4 percent.

Cab Sales paid approximately half of the loan and ultimately the balance of it was forgiven, in effect, by Yellow. We will come to that transaction later.

At the beginning of the situation in which Cab Sales held the stock of Checker, Cab Sales did not itself operate any cabs in Chicago. It sold these cabs made by C. C. M. which were imported into the State to Checker, and took its commission on the sale. Later on they started to fore-

close on many of these cabs on which the drivers could not maintain the payments, and as Cab Sales began to foreclose on these loans Cab Sales itself went into the business of operating cabs.

However, the cabs were all operated under the name of Checker Taxi Company. Ultimately all of the cabs which had been operated by the Checker Taxi Company came to be operated by Cab Sales, and Checker became a mere shell with assets limited in the main to the ownership of certain licenses which Checker had secured from the City License Bureau to operate cabs.

28 Checker leased these licenses to Cab Sales for, I think it was, $180 a year. Cab Sales subsequently sold its stock in Checker to a small syndicate of Markin's associates, and they at the present time own Checker, which now does not operate cabs in the city.

The Parmelee group from the beginning of its relationship with Yellow and Chicago Yellow was greatly concerned over the question of whether the Parmelee group could continue to hold control of Chicago Yellow, the holding company, and Yellow, the operating company, because at the outset all Parmelee had was 26 per cent of the stock of Chicago Yellow.

Parmelee, of course, secured the management which gave it control over the operations of Yellow and Chicago Yellow, but it wanted further control, and a further measure of protection so that Parmelee would be insured against having the Yellow company become an active competitor in the Chicago market with the Parmelee inter-station transportation business.

Shortly after the conspiracy started, Yellow be-
29 gan to buy a large amount of Chicago Yellow's stock on the open market, and at one time owned, I believe, 25 percent of that stock.

Under the guidance of Parmelee, Yellow was induced to take the stock which it owned in Yellow and transfer it to another corporation specially organized for that purpose to hold this stock, the Waverly Corporation, and then through a series of maneuvers, the defendant, Morris Markin, acquired a stock interest in this Waverly Company which held this large block of Chicago Yellow stock.

Then Parmelee and the Waverly established a voting trust of their respective shares of stock, and by means of this voting trust, Parmelee was enabled to control nearly 50 per cent of the stock of Chicago Yellow, and in that way

insure themselves against having Chicago Yellow slip out from under control.

At one time, there was a little difficulty in connection with certain of the directors of Chicago Yellow and Yellow, objecting to certain of the Parmelee policies and practices.

Those difficulties were ultimately ironed out by
30 these directors being gradually eliminated from their positions on the Chicago and Yellow boards.

Throughout this whole period of time, Yellow has been purchasing its cabs from Checker Cab Manufacturing Company, and companies other than the defendant, Checker Cab Company have been excluded from competing for any part of that market, up to the time the government started its investigation of this case.

Now, I come to the portion of the government's case dealing with agreements among the Chicago cab operating companies to limit the number of cabs they would operate, and the relationship between those cab companies and the Chicago ordinances.

At the outset, I want to make this fact clear. The government in prosecuting this suit is not in any way attacking or casting any reflections on the ordinances governing taxicab operations which have been passed by the City Council of Chicago. The government has no intention of doing that, and, of course, could not, if it wished.

The City Council has jurisdiction over governing the
31 operations of cabs, governing the issuance of licenses in this area.

All the government wishes to do is to free the City Council of Chicago from restraints of trade which have been imposed by the agreement between the cab operating companies in Chicago.

Starting about 1929 or 1930, the Parmelee group, together with Yellow and Checker, agreed that it was necessary and advisable to reduce the number of cabs operating in Chicago.

It was about that time, and shortly after, that the Parmelee group had secured control of about 4,500 out of over 5,000 licenses which could be issued in the city of Chicago.

Now, why did these companies want to restrict the number of cabs operating?

One of the reasons was that the depression was starting, and it was difficult for the companies to operate a full complement of cabs, and keep the kind of profits that it was necessary for Parmelee to have if it, in turn, was to keep itself floating financially.

Now, starting quite early in the history of this conspiracy, the defendants agreed that they would limit
32 the number of cabs which they operated in Chicago, and at the same time that they would limit the number of cabs operating in Chicago, they would keep all of the licenses which had been issued to them.

Now, it was essential for them to do that. They had to keep all the licenses, even though they were not operating cabs under the licenses, because if they surrendered the licenses to the city, then those licenses might be turned over to some outside competitive influence which would come in and threaten the position which the Parmelee group occupied in Chicago, and the position of the Parmelee group included not only a privileged status which Checker Cab Manufacturing Company had in selling cabs, but also the privileged position which Parmelee had in operating cabs on its inter-station run between the railroads.

So by agreement between the defendants, agreements running out to Checker Cab in Michigan and to Parmelee in New York, and reaching back into Chicago, not by individual action of Checker, not by individual action of Cab Sales, not by individual action of Yellow, but by concerted combined action involving conspiratorial agreements
33 between all of these parties, they did, during that period, 1929 to 1937, reduce markedly the number of cabs which they operated in Chicago, while at the same time keeping their licenses intact.

34 In 1937 about the middle of the year Parmelee proposed a program for joint action by Parmelee, C. C. M. and these local cab operating companies controlled by the Parmelee group. They proposed that an attempt be made to induce the City Council to pass an ordinance limiting the number of licenses in the City of Chicago to 3,000. While the defendants were negotiating back and forth with respect to this proposal and bringing pressure on the City Council to secure this kind of a license reduction program, the defendants Yellow and Checker entered into a separate agreement having no relationship whatsoever to the ordinance or to any ordinance, under which Checker agreed that it would withdraw cabs from operation on the streets of Chicago and it would keep the licenses intact on those cabs so that no outside competitor could get in, and if it would withdraw these cabs from operation Yellow would pay Checker for so withdrawing the cabs.

This agreement went into effect about the middle of 1937 and continued in effect until the end of the year.

35 At the end of the year 1937 the City Council passed an ordinance providing for the permissive reduction of cab licenses in the City of Chicago to 3,000.

I want to emphasize that this ordinance did not require the cab companies to give up licenses and cut down their operations. It merely permitted individual cab companies to give up their licenses to the City and in return for that, if they gave up their licenses, they would have and keep a contractual right to get those licenses back if at some time in the future the City increased the number of cab licenses above the 3,000 level. That is roughly what the arrangement was.

This ordinance was made to order for the defendants because it would enable them to surrender licenses on which they had been paying license fees, but on which they had not been operating cabs. By agreement between Checker and Yellow the two companies agreed that they would reduce, they would surrender a certain number of licenses to the City. Understand here again, it was not done individually. Incidentally, no other taxicab operators in the

36 City, so far as I know, surrendered licenses. It was only Checker and Yellow who wanted to bring the number down. They agreed between each other and with the guidance and approval of the Parmelee group to surrender a certain number of licenses to the City of Chicago which would bring the total number of licenses for these two companies down to I believe 2595, or something like that.

If Checker agreed to surrender a certain number of licenses, then Yellow would pay Checker a certain sum for surrendering the licenses. Actually, however, when we trace this transaction through we find that the payment consisted of this: The Court will recall that I mentioned that Yellow had loaned the money to Cab Sales to enable Cab Sales to get control of Yellow. Cab Sales had never completed paying that indebtedness owed, and Cab Sales still owed approximately $300,000 on the original loan. This cab reduction agreement simply washed out that debt or in large measure washed it out.

These companies, Checker and Yellow, actually did not give up anything in surrendering their licenses to

37 the City because prior to the time, long prior to the time the ordinance had gone into effect, these two companies by agreement among themselves had already reduced the number of cabs they were operating to ap-

proximately the number of licenses which they ultimately retained after surrendering certain blocks to the City.

The sole effect of the ordinance from the standpoint of Checker and Yellow was not to reduce the number of cabs they were operating because they had already by agreement among themselves, agreements approved by Parmelee, all reduced their cab operations. It did relieve them of the burden of paying license fees and it gave them the right contractually under the ordinance to have first call on any new licenses that might be issued above the number of three thousand.

That brings us down to the post war period. During the post war period many Veterans coming back to Chicago were seeking to secure cab licenses so that they might operate cabs of their own, and they found that they could not secure licenses because all of the licenses were held by the companies then operating cabs, including
38 Checker Cab and Yellow.

The City Council passed an order permitting the issuance of certain licenses, I believe 250, to these Veterans, and the Commissioner of Licenses issued an order directed to Yellow and Checker, ordering them to give up certain licenses which they then held because even though the City Council had reduced the number of licenses to 3,000 in the City of Chicago, Checker and Yellow still continued to reduce the number of cabs they operated below the number that they were permitted to operate under the license. So, if they had, for example, 2,000 licenses, they would operate only 2,000 cabs, hold the 500 licenses and keep outside competition from coming into Chicago, competition which might buy cabs from companies other than C.C.M. and competition which might attack the privileged position of the inter station business.

Yellow and Checker brought a suit against the City to enjoin the cancellation of these licenses which they were not using and to enjoin the issurance of licenses to others.
39 The State Court upheld the Yellow and Checker position, holding, among other things, that Yellow Checker had a contract with the City and had the prior right to these additional licenses which were issued.

I think it is quite possible that during the course of this trial the defendants in this case may object to the off r by the Government of evidence relating to this local cab situation.

Mr. KAUFMAN: May I interrupt for a moment and say here and now that matter has been passed on by the Su-

preme Court and, for all practical purposes, that is out of this case. It may be that certain local activities may be referred to in the evidence for the purposes of proving the so-called alleged conspiracy with respect to the restraint of interstate commerce on sales. It is a matter that we have referred to at one of the previous meetings with your Honor. We saw fit at the conclusion, after the Supreme Court decision not to move to strike certain of the allegations of the complaint. But we notified the Government then and we make it clear now that all of this has been passed on by the Supreme Court, and under the decision of the Su-
40 preme Court there are two ultimate questions to be determined by this Court.

The COURT: And what are those two?

Mr. KAUFMAN: In the language of Mr. Justice Murphy, he assumed the allegations of the complaint which state that in January, 1929, one Morris Markin and others commenced negotiations to merge the more important taxicab operating companies in Chicago, New York and other cities.

He then proceeds:

"Parmelee Transportation Company was organized in April, 1929, with 62 percent of its stock being owned by C.C.M."

I am certain that the Government will not be able to prove that is a fact.

Mr. Justice Murphy in his opinion said:

"The test of illegality under the Act is the presence or absence of an unreasonable restraint on interstate commerce. Such a restraint may result as readily from a conspiracy among those who are affiliated or integrated under common ownership as from a conspiracy among those who are otherwise independent.
41 The complaint charges that the retsraint of interstate commerce was not only affected by the combination of appellees, but was the primary object of the combination. The theory of the complaint, to borrow the language from U. S. v. Reading Company, 253 U. S., is that dominating power over the cab operating companies was not obtained by normal expansion to meet the demands of a business growing as a result of superior and enterprising management, but by deliberate calculated purpose for control."

42 The questions, therefore, are: (1) as to whether or not there was a conspiracy for the ultimate object of restraining interstate commerce relating to the sale of

taxicabs; and (2), as to whether or not there was an undue restraint as a result of those activities.

That is borrowed from the language of Mr. Justice Murphy.

The next question involved in this case is the so-called second point in Mr. Justice Murphy's opinion, and that relates to the failure of the operating companies to compete with Parmelee Company in connection with the inter-station business which the Supreme Court regarded as being interstate commerce.

Your Honor will recall that on the argument before you of our original motion to dismiss the complaint, the suggestion was made by us that there could be no competition between those two companies because the equipment and everything else was entirely different. A taxicab
43 must go, under the ordinances, wherever a passenger directs him to go. The Parmelee business is between stations. So that there could be no competition between them, not only from the point of view of the ordinances but from the point of view of equipment.

Your Honor directed a question to Mr. Williams during the course of his argument wherein your Honor inquired whether it was not a fact that the equipment and services as between the Parmelee Company and the operating company were not totally different, and he responded to your Honor in effect stating that they were.

Your Honor in your opinion referred to that fact. The Supreme Court said in a footnote:

> "The District Court thought that Parmelee equipment and service are so totally different from the taxicab business of Yellow and Cab Sales as to make competition for contracts impractical and unlikely. That
44 is a matter for determination at the trial on the merits and does not negative the sufficiency of the complaint."

But there was a concession before your Honor during the course of the argument, which concession did not reach to the Supreme Court.

Mr. Hotchkiss: Your Honor, the government's position is that the amended complaint as drafted conforms wholly to the mandate of the Supreme Court in this case, and that the evidence which the government intends to offer in this case will come within that mandate.

Let me refer for a moment to the original complaint in this case and to the decision of the Supreme Court and the opinion of Justice Murphy.

The original complaint had a section entitled, "Nature of the Trade and Commerce Involved." In other words, it sets out the elements of interstate commerce that are in the case, and it sets forth three elements of interstate commerce.

One is this Parmelee inter-section transportation of railroad passengers. Two, it set forth the sale of taxi-
45 cab motor vehicles by C.C.M. to operating companies throughout the country. C.C.M. is located in Kalamazoo, Michigan, and in order to get its cabs into the hands of Yellow and Checker and DeLuxe, and Yellow of New York and the other operating companies controlled by Parmelee, it has to ship them in interstate commerce. That was the position of the government.

Then the third point, the third element of interstate commerce alleged in the earlier complaint, was this:

"Many persons in the course of travel—"

I will summarize it.

46 The allegation was that if a person took a Yellow or Checker cab from a railroad station, and took that cab out to his home or to his office, or if a person called a cab at his home or office to go down to a railroad station, that was a part of interstate commerce.

Now, the Supreme Court, in its opinion handed down by Justice Murphy, written by Justice Murphy, said, as to the sale of cabs by Checker Cab Manufacturing Company to the local operating firms, said yes, that is interstate commerce. They said as to the transportation of passengers between railroad stations in Chicago, they said yes, that is interstate commerce.

As to this third point here is what the Court said, at the conclusion of the Court's discussion on this Point 3. The Court said:

"All that we hold here is that when local taxicabs merely convey interstate train passengers between their homes and the railroad station in the normal course of their independent local service, that service is not an integral part of interstate transportation,
47 and the restraint on or monopoly of that general local service without more is not proscribed by the Sherman Act."

In other words, if the government in this case had filed a complaint charging simply, and nothing more, that Yellow and Checker combined and conspired to monopolize the cab business of Chicago, and nothing more, the Supreme Court said that would not constitute a good cause of action.

However, in the amended complaint, the cause of action goes far beyond that local situation. It is not limited to the local situation; it goes to the interstate elements, your Honor, approved by the Supreme Court.

It is the position of the government in this case that as the evidence unfolds, it will become apparent that there is such a close and intimate relationship between the local restraints with interstate restraints that they cannot be separated, that they are one together.

Now, when you encounter a situation like that, the question is does the jurisdiction of this court extend to deal with those local aspects of this case which are used as a means to bolster up and give substance to restraint
48 of interstate trade and commerce. Does the jurisdiction of the court extend to that?

The position of the government in this case is that it was necessary for the Parmelee group, in order to secure the direct restraint and monopolization affecting interstate commerce, to get this local control and this local monopolization, and this local monopolization in turn was used to strengthen and further the power that was created in the restraint on interstate trade and commerce.

Your Honor, one week ago today the Supreme Court in a significant decision ruled on what I believe to be this identical question, as to whether, in the event there is this close relationship between interstate restraint and local commerce, whether the jurisdiction of the court extends to all of it.

In the case of Mandeville Island Farms vs. American Crystal Sugar Company decided by the Supreme Court last Monday—and I might state that the government has cited this case in the brief which was turned over to the court and to defense counsel. It is cited on page 16.

49 Now, your Honor, that was an action for triple damages under the Sherman Act. The plaintiffs in the suit were some beet growers, I believe, located in a state. You see, the action for triple damages was based on the charge that there was a price-fixing combination with reference to beets which were locally grown.

The defendants in the case said there is no cause of action here because this is just a local conspiracy. It just affects local beets, the price of sugar beets that are grown within the boundaries of a state.

The Supreme Court held as follows, as a part of the decision:

"And even if it is assumed that the final aim of the conspiracy was control of the local sugar beet market, it does not follow that it is outside of the scope of the Sherman Act, for monopolization of local business when achieved by restraining interstate commerce, is condemned by the Act."

Then they go on and cite the case of Stevens Company vs. Foster & Kleizer, 311 U. S. 255, 261. The Court continues:

50 "And the conspiracy with the ultimate object of fixing local retail prices is within the Act if the means adopted for its accomplishment reach beyond the boundaries of one state."

Now, it is the contention of the government in this taxicab case that certainly with reference to all of these local restraints engaged in by conspiracy between the defendants, and which had their effect upon interstate commerce, that those local matters were adopted by means beyond the boundaries of this state.

The evidence will show throughout this case that time and time again these local restraints were determined upon, were directed from outside the State of Illinois, from Kalamazoo, from New York, and they were determined upon and directed for the purpose of not only achieving these local ends which were felt to be desirable by themselves, but also to help further the combination and conspiracy, directly restraining and monopolizing interstate trade and commerce.

The government contends that as the evidence is
51 presented in this case, and as the documents, one by one, are offered in evidence, and as they are studied, that that evidence will show beyond the shadow of a doubt that there is one over-all conspiracy in this case, and that whatever local matters there are in the case, and there are local matters, that they are part and parcel of this combination and conspiracy to restrain and monopolize interstate trade and commerce, all within the jurisdiction of the court.

Thank you.

(Whereupon a recess was taken until 2 o'clock p. m. of the same day, May 17, 1948.)

52 No. 46 C 1339

UNITED STATES OF AMERICA, PLAINTIFF,

vs.

YELLOW CAB COMPANY, *et al.*, DEFENDANTS.

Before Judge La Buy

Monday, May 17, 1948,
2 o'clock p. m.

Court met pursuant to recess.

Present: Mr. Hotchkiss
Mr. Williams
Mr. Kaufman
Mr. Lynton
Mr. Ginsberg
Mr. Fuller
Mr. Climenko

Mr. WISDOM: Your Honor, in view of the developments with respect to Mr. Kaufman, I would like at this time to move the admission of Mr. Climenko, for the purposes of this case. He is also from New York.

The COURT: You are a member of the same firm as Mr. Kaufman?

Mr. CLIMENKO: Indeed I am.

The COURT: The record may show your admission
53 for the purposes of this trial.

Mr. HOTCHKISS: The government has completed its opening statement, and I do not know what the wish of defense counsel is, whether they wish to proceed.

Statement on Behalf of Defendants

Mr. KAUFMAN: May it please the Court, on behalf of the defendants, each of whom is separately represented, but for the convenience of the Court, one counsel will carry the laboring oar during the course of the trial.

It is our purpose at this time to reserve our opening with respect to the evidence to be adduced on behalf of the defendants. I desire, however, to make several observations with respect to the opening of counsel for the government.

I indicated before that there are two questions left in this case: (1) as to whether or not there is a restraint of trade with respect to the failure of the operating companies in Chicago to compete with the Parmelee System, which your Honor determined on the basis of a concession made by counsel, and the proof will undoubtedly show that the

concession made by counsel during the course of the argument on the motion to dismiss was absolutely correct, and I think that that element will be out of the case very early during the course of the trial.

54

The only other item is the alleged conspiracy, having as its object the restraint of trade with respect to the sale of taxicabs to the operating companies in given areas.

I have indicated the opinion of Mr. Justice Murphy with respect to those questions. The first element in proof by the government is the conspiracy of the illegal agreement as between the parties. They have indicated that they have 459 documents out of which they will attempt to prove this alleged conspiracy. It seems that if it takes that many documents to prove that point there is considerable question about their ability to do so.

During the course of the preparation of this case for trial it has been our purpose and our objective to cooperate with the government to the fullest possible extent, for the purpose of shortening the trial, for the purpose of giving to the government all of the information that they desired. Whether they were entitled to it as a matter of right or not made no difference. We have attempted to concede the authenticity of many of the documents. We have attempted in various ways by the making of concessions to shorten the trial and to simplify the issues in this case.

55

There are, however, with respect to the documents that have been submitted to us a number of them that we have not conceded the authenticity of. There are others about which there will be serious objection as to the relevancy and materiality to the issues in this case.

The government has handed to your Honor what Mr. Hotchkiss has described as excerpts from the exhibits that they intend to offer. It seems to me that in the trial of a case a record is made, testimony of witnesses, exhibits as they are marked in evidence, and I think that this document that the government has submitted will tend to do nothing but confuse the issue.

It has for its object apparently the creation of a record, not the one that is made during the course of the trial, but an array of documents that they hope will eventually get into evidence. As to whether or not the parts that they have set out in this document are the only material parts is another question, and it seems to me that this kind of a document is something that should be handed to the court

56 at the conclusion of the trial by way of briefs for the purpose of aiding the court in analyzing the various documents that have been offered in evidence, rather than to permit this kind of a document to be confused with part of the record in the case.

I move at this time that this document be stricken from our consideration in the course of this trial. It has no place in the trial.

The COURT: Well, it appears to the court that it may be helpful. While there is merit to your contention that this is not to be considered by the court as evidence in the case, as it is not until it is received, as I understand it, the government prepared this to be helpful to the court as the court is considering the different instruments that they offer. I think counsel for the government indicated many of them were rather long and they were only taking parts of them. It seems to me there would be no prejudice, and it would be helpful to the court to have this as a guide while the court is considering each exhibit that the government is seeking to have admitted or received in evidence, so that the court can refer to this book for the excerpt contained in the

57 exhibit that they wish to introduce. I can see no prejudice, and I think it would be helpful. But that is the only use it could serve. I can assure you now in advance that the court will not read this before each exhibit is submitted. So, as counsel offers an exhibit, he can indicate to the court what page it is on and I will refer to it, and then I will immediately see the excerpt he is referring to.

Mr. KAUFMAN: The difficulty, Sir, is that there may be other excerpts from that particular document that may be material and relevant from the defendants' point of view.

The COURT: Then you will prepare an excerpt of that portion that the government omitted, that you consider important enough to be considered in relation to that portion which the government offers.

Mr. KAUFMAN: It seems then we are preparing two briefs during the course of the trial, one to be submitted to your Honor at the conclusion of the entire case, and one as we go along. Assume a document here—I shall turn to one at random.

58 On page 98—I have not seen this before—they refer to Government's Exhibit No. 49. It is apparently a letter from one Levin Rank to the Chicago Cab Company. Whether it is the entire letter or not, I have no idea, but there may be other things in that document that are material that the Court will take into account, or the Court

should take into account, and if the Court has this before him, and assuming that we prepare a counterpart to this with respect to this same exhibit, I think it is going to help the confusion in the Court's handling of all of these unnecessary documents, and it would seem to me that the time for analyzing the various documents would be at the conclusion of the entire case when the Government will serve its brief and we will have an opportunity to answer it, then the Government will reply, and the Court then will be relieved from having two very long documents, together with a long record, and as I say a part of 459 exhibits. They will all not go into evidence. That seems to me to be a certainty, but this is predicated on the theory that every one of them will go into evidence, and I think we are just starting out—

59 The Court: No, I do not quite agree with your logic there. I think the Government hopes that the Court will receive these 459 exhibits, but the fact it is stated that this is a digest is no indication that the Court will give them any greater consideration than if they were presented to the Court in this form. I see no prejudice at all to the defendant in the Government's admitting them and I would suggest before ruling on your motion that we proceed, and as we progress, if the Court finds it helpful and useful, the Court will refer to it, and if it does not, it will not be referred to, but I can assure counsel for the defense that the fact it is presented would not add any greater weight for the admission of this document than if it had not been presented in digest form.

Mr. Kaufman: Then, with those observations, the defendant will reserve its opening as to its defense until the close of the Government's case.

The Court: You may have that privilege.

Thereupon the Government, to Maintain the Issues on its Part, Offered the Following Evidence, To-wit:

Offers in Evidence

Mr. Hotchkiss: Your Honor, at the outset, I wish to offer into evidence three stipulations which I have
60 asked the reporter to number for the purpose of identification, in view of the fact we already have numbers up to 459, may these three stipulations be numbered for the purpose of identification 460, 461 and 462.

(Said documents marked, respectively, Government's Exhibits 460, 461 and 462 for identification.)

By Mr. Hotchkiss: I offer in evidence Government's Exhibits 460, so marked for identification, which is Stipulation No. 1.

Is there any objection?

By Mr. Kaufman: What is that?

By Mr. Hotchkiss: It is a stipulation providing only to the extent that any original document may be admissible into evidence on the trial of this action, and a photostatic copy of such document may be offered into evidence by the plaintiff or any defendant with like effect as the original document.

No. 2, the second stipulation is that in the event plaintiff desires to subpoena any available officer or employee of any corporate defendant or subsidiary of such defendant in the trial of this cause, the plaintiff may serve such subpoena on counsel for the defendant corporation
61 of which such officer or employee is affiliated, and such counsel will accept service on behalf of the officer or employee so subpoenaed.

And I offer Government's Exhibit 461, so marked for identification, consisting of Stipulation No. 2 entered into between the parties to this case, providing that for the purpose of this action only and with respect to the documents mentioned in the replies of the defendants to the plaintiff's request for admissions under Rule 36 of the Rules of Civil Procedure, that none of the defendants will offer any of the following specific objections on the trial of this cause. Then thereafter are recited the objections which the defendants will not make with respect to those documents. I will let the exhibit speak for itself on those terms.

And I offer Government's Exhibit 462, which has been marked for identification. This is Stipulation No. 3, and it has been entered into between the parties to this cause. The first stipulation in this one provides that employees of railroads which sell to railroad passengers railroad tickets, to which are attached coupons for the trans-
62 portation of such passengers and their luggage by the Parmelee Transportation Company between railroad stations in the City of Chicago would, if called as witnesses by the plaintiff on the trial of this action, testify that a substantial number of such railroad tickets with such coupons attached are sold to railroad passengers in the following three classes:

First is railroad passengers outside of the State of Illinois for travel to destinations within the State of Illinois.

The second, railroad passengers within the State of Illinois for travel to destinations outside of the State of Illinois.

And third, railroad passengers outside of the State of Illinois for travel through the State of Illinois to destinations outside of the State.

No. 2, that each defendant, if called as a witness by the plaintiff on the trial of this action, would testify to any fact alleged in the amended complaint which is admitted by the answer of such defendant.

And each defendant, if called as a witness by the plaintiff on the trial of this action, would testify to any
63 fact admitted in the answer of said defendant to the interrogatories propounded by the defendant on or about December 5, 1947.

This stipulation is made solely for the purpose of this trial, and all matters herein recited shall be subject to objection by either side on the ground of relevancy or materiality. Nothing in this stipulation shall preclude either the plaintiff or the defendants from introducing additional evidence.

(Said documents, so offered and received in evidence, were marked, respectively, Government's Exhibits 460, 461 and 462.)

Mr. Hotchkiss: Will you mark these documents Government's Exhibits 463, 464, 465, 466, 467, 468 and 469, 470, 471 and 472?

(Said documents were marked, respectively, Government's Exhibits 463, to 472, inclusive, for identification.)

Mr. Hotchkiss: I offer what has been marked for identification Government's Exhibit 463, consisting of a true copy of the plaintiff's request for admissions under Rule 36, and directed to the defendants Yellow Cab Company and Chicago Yellow Cab Company. And the same for Government's Exhibit 464, marked for identification, which is the reply of defendants, Yellow Cab Company and Chicago Yellow Cab Company, Inc., to plaintiff's request for admissions under Rule 36.

64 (Said documents, so offered and received in evidence, were marked Government's Exhibits 463 and 464.)

Mr. Hotchkiss: I offer what has been marked for identification as Government's Exhibit 465, consisting of a true copy of the plaintiff's request for admissions under Rule 36, as was served upon the defendant Parmelee Transportation Company.

(Said document, so offered and received in evidence, was marked Government's Exhibit 465.)

Mr. Hotchkiss: I offer what has been marked for purposes of identification as Government's Exhibit 466, consisting of the reply of the defendant Parmelee Transportation Company to plaintiff's request for admissions under Rule 36.

Mr. Kaufman: It is of course understood that they are offered only as against the defendant who made the admissions.

Mr. Hotchkiss: They are offered against the defendant who made the admissions, subject of course to the terms of the stipulation which has been entered into with respect to the nature of that request for the admission.

Mr. Kaufman: I don't understand that, Mr. Hotchkiss.

Mr. Hotchkiss: I will read that.

65 The Court: Are they limited to those who made the admissions?

Mr. Hotchkiss: It is offered against them subject, however, to the fact that a stipulation was entered into to the effect that none of the defendants will offer any specific objections on the trial of the action, in substance, to the specific admissions made by any other defendant to the authenticity of the document, and the fact that it was sent or received or matters of that nature.

Mr. Kaufman: That is quite all right, but still that does not indicate that they are admissible against any person other than the persons making the admission.

Mr. Hotchkiss: I think that would be more properly ruled upon by the Court when the Government does offer a specific document in evidence against all of the defendants.

Mr. Kaufman: We are concerned with the offer you have made thus far, and that is the admissions made by one of the defendants. My inquiry is as to whether or not you are offering them as against the particular defendant who made the admission, or whether you are making the

66 offer against all of the defendants.

Mr. Hotchkiss: I am offering it as to the particular defendant who made the admission, and I am also requesting that the defendants give adherence to the terms of the stipulation which they entered into, as I am sure they will when the time comes. In other words, that when we come to offering specific documents, which have been identified as to authenticity by a single defendant, then the

other defendants under the terms of the stipulation as I understand it agree not to offer any objections with respect to that particular aspect of the genuineness of the document which has been admitted in the admission of a single defendant.

The Court: In other words, that the defendants who did not make the admissions would not be permitted to question the authenticity of this document.

Mr. KAUFMAN: That is quite all right.

Mr. HOTCHKISS: Yes.

Mr. KAUFMAN: That is quite all right, but we are concerned now with the admissions made by a particular party, and Mr. Hotchkiss takes the position that he is offering them against the party making the admission.

67 He expects us to adhere to our stipulation, and there is no question but that we will adhere to it.

But for the record at the present time the offer is made against the particular defendant that made the admissions.

Mr. HOTCHKISS: Apparently Mr. Kaufman is attempting to raise a question of order of proof in a conspiracy trial which I think would more appropriately come when the Government offers in evidence the document as to which one of the defendants has admitted authenticity. Then the question would arise as to whether that document concerning which one or more of the defendants has admitted authenticity can be admitted against all of the defendants under the usual conspiracy rules.

Mr. KAUFMAN: I will let the record stand as it is.

Mr. HOTCHKISS: Very well.

(Said document, so offered and received in evidence, was marked Government's Exhibit 466.)

Mr. HOTCHKISS: Next I offer what has been marked

68 for purposes of identification as Government's Exhibit 467, consisting of a true copy of plaintiff's request for admission under Rule 36, directed to defendants Cab Sales and Parts Corporation and the Checker Taxi Company.

(Said document, so offered and received in evidence, was marked Government's Exhibit 467.)

Mr. HOTCHKISS: I now offer what has been marked for purposes of identification as Government's Exhibit 468, which is the reply of the defendant Cab Sales and Parts Corporation to plaintiff's request for admissions under Rule 36.

(Said document, so offered and received in evidence, was marked Government's Exhibit 468.)

Mr. Hotchkiss: I offer in evidence what has been marked for purposes of identification as Government's Exhibit 469, consisting of reply of the defendant Checker Taxi Company to plaintiff's request for admissions under Rule 36.

(Said document, so offered and received in evidence, was marked Government's Exhibit 469.)

Mr. Hotchkiss: I offer what has been marked for
60 the purpose of identification as Government's Exhibit 470, which is a copy of plaintiff's request for admissions under Rule 36, as to the authenticity of documents as directed to defendants Checker Cab Manufacturing Corporation and Morris Markin.

(Said document, so offered and received in evidence, was marked Government's Exhibit 470.)

Mr. Hotchkiss: I offer what has been marked for identification as Government's Exhibit 471, consisting of reply of the defendant Morris Markin to such plaintiff's request for admissions under Rule 36.

(Said document, so offered and received in evidence, was marked Government's Exhibit 471.)

Mr. Hotchkiss: Next I offer what has been marked for purposes of identification as Government's Exhibit 472, which consists of reply of the defendant Checker Cab Manufacturing Corporation to plaintiff's request for admissions under Rule 36.

(Said document, so offered and received in evidence, was marked Government's Exhibit 472.)

70 (Whereupon certain documents were marked Government's Exhibits 1 to 459, inclusive, for identification.)

Mr. Hotchkiss: First of the documents which have already been numbered for purposes of identification, and which are excerpted in the book which has been provided your Honor as well as defense counsel. I feel that the admissions which have been made by defendants as to the authenticity and genuineness of certain of these documents would cover this first document and the others which we come to.

I offer in evidence what has been marked for identification as Government's Exhibit No. 1, which bears the further identification appearing on the documents which were given to certain of the documents in connection with a request for admissions under Rule 36, the number M-5.

This exhibit consists of the minutes of a meeting held January 25, 1929, of the directors of Checker Cab Manu-

facturing Company at 165 Broadway, New York, New York.

Mr. KAUFMAN: And that is a—

Mr. HOTCHKISS: The Government offers this against all of the defendants, subject to connection.

Mr. KAUFMAN: I object to it on behalf of all of the defendants other than Checker Cab Manufacturing
71 Company, on the ground that there is nothing to indicate it is binding on any of those defendants, and it is immaterial and irrelevant with respect to the other defendants.

The COURT: This is a meeting of what company?

Mr. KAUFMAN: Checker Cab Manufacturing Company.

Mr. HOTCHKISS: Directors meeting of Checker Cab Manufacturing Company held on January 25, 1929, in New York.

The COURT: C. C. M.?

Mr. HOTCHKISS: C. C. M. That is the manufacturer of these cabs which are shipped in interstate trade and commerce.

The COURT: All right.

Mr. KAUFMAN: There is no question but what that is a true copy of the minutes of meeting of Checker Cab Manufacturing Company, but we insist it is not binding on the other defendants.

Mr. HOTCHKISS: Your Honor, the position of the Government as to this and the other documents which will follow is that this document, together with the others consists of a showing of acts done. It consists of declarations made by one conspirator during the course of the conspiracy in furtherance of that conspiracy and in aid thereof.

72 Mr. KAUFMAN: Now we come—

Mr. HOTCHKISS: Just a moment, please. It is true in virtually all conspiracy cases, almost all, that it is impossible for the government at the outset of the trial and with the introduction of the first bit of evidence to establish a conspiracy which clearly shows that all of the defendants were parties thereto. That is something that must be developed over the period of the course of the trial.

There may be a difference of opinion as to this document. The government is willing to concede at this point, purely for purposes of argument only, that this document does not establish that all of the defendants were at this time parties to the conspiracy. Some of the defendants had not even come into existence. For example, at the time these minutes were written Parmelee had not come into existence. Cab Sales & Parts had not come into existence.

Presumably Chicago Yellow and Yellow did not know about this. Maybe they had not joined the conspiracy. Nevertheless, this document does mark the beginning of the conspiracy and does set forth the objectives to which the then members of the conspiracy subscribed, and the then members of the conspiracy as shown on
73 the face of the documents were Markin and C. C. M.

Now, under the law as to the admission of such documents, I believe that this should be admitted as to and against all of the defendants, subject to the government's bearing the burden of proving that all of the defendants were engaged in a conspiracy.

Now, as that is proved, and as I believe the government will be able to, then certainly this document would go against all of the members of the conspiracy, against all of the defendants. So I make the offer of this document, and ask that it apply to all of the defendants, subject to connection.

Mr. KAUFMAN: If your Honor please, as Mr. Hotchkiss has stated, some of these defendants were not even in existence at the time of the making of this document. How they ever could become bound by something that took place before they were organized is difficult to understand, and it seems to me that for the present this can be admitted only as against C. C. M. and Mr. Markin.

The COURT: I think Mr. Kaufman's position is well taken. It is hard for me to appreciate how this could be ad-
74 missible against defendants who were not in being at the time. It is possible you may be able to connect it. I am not prejudging it, but for the present the court will receive them against Checker Cab Manufacturing—

Mr. HOTCHKISS: And Mr. Markin.

The COURT: And the court will have to sustain the objection on the balance until such future time—

Mr. HOTCHKISS: And Mr. Markin, also.

The COURT: No.

Mr. HOTCHKISS: Mr. Markin was a party to this document.

The COURT: Well, it seems to me it would be admissible against Mr. Markin—

Mr. KAUFMAN: Yes, I said it should be admitted—

The COURT: In other words, against the two?

Mr. KAUFMAN: That is right, Sir.

Mr. HOTCHKISS: Yes.

The Court: You may renew your motion later. If the court feels that there is reason to change its ruling, it will be changed.

(Said document, so offered and received in evidence, was marked Government's Exhibit 1.)

Mr. Hotchkiss: The government would like to
75 have the privilege of calling to the court's attention certain cases which have held that in this type of situation the document may properly be admitted as against all of the defendants, even those who subsequently joined the conspiracy and those who come into creation subsequently.

The Court: Would that be on the theory that they acquiesced?

Mr. Hotchkiss: That they acquiesced, that they accepted the actions which were entered into by the members of the conspiracy who first started the conspiracy. After all, I think in most of these conspiracy cases you have the situation in which at the beginning there may be only two or three parties to the conspiracy. They formulate the broad outline and plan of the conspiracy, and then others joint the conspiracy as it goes along and subscribe to what has been done and will ratify the acts of those who have gone before.

The Court: It is difficult for the court to anticipate what the evidence will reveal as the case progresses and, for that reason, I do not feel that I should allow it at this time, until it is disclosed that it should be properly admitted against all. However, you will not be prejudiced,
76 because should your evidence show it should be received later, and if there is proper connection, the court will allow it to go in evidence against all.

Mr. Hotchkiss: Very well.

The Court: But for the present I am sustaining the objection.

Mr. Hotchkiss: Yes.

I read the excerpts which have been set forth in the volume—

The Court: What page is that on?

Mr. Hotchkiss: On page 1. Unfortunately, the page has not been numbered. It is the page immediately preceding what is marked as page 2, after the index. It is under the heading, "Description of Exhibits," and "Opening Stage of the Conspiracy," and the sub-heading, "(a) Objectives."

The Court: It is under Government's Exhibit 1?

Mr. Hotchkiss: Government's Exhibit 1.

The Court: All right.

Mr. Hotchkiss: That consists of minutes of a special meeting of the board of directors of Checker Cab Manufacturing Company, held at 165 Broadway, New York, on the 25th day of January, 1929 at 3:30 p. m., and I read from the excerpted portions:

77 "There were present Messrs. Markin, Adams, Haveron, Halff, Weiss, Polansky, Gillespie, Ludington and Moos, being a quorum.

"The Chairman presented the balance sheet of this Company as of December 31, 1928, prepared by the Company's auditors, which included operations of this Company for the fiscal year 1928, and the operations of Fisk Discount Corporation and of W. P. B. Sales Co., Inc. from November 1, 1928 . . .

* * *

"Mr. Markin reported that he was engaged in negotiating for the organization of a company which would effect an amalgamation between some of the more important operating companies. He also stated that the plan contemplated the organization of a management company, which would endeavor to furnish uniformity of management for such operating companies and to effect various economies in operation. He felt that in this way this company would be in a position to re-

78 ceive recuring orders from substantial operating companies that would be in a position to pay cash. In order to accomplish this result, the bankers interested in the proposal would require Mr. Markin to give the benefit of his advice and some of his time to the proposed company and to the management company, and that he had also been requested to subscribe for the securities for the proposed new company.

"Mr. Halff stated that he considered the proposal one which should be most beneficial to this company, and that he personally was prepared to see Mr. Markin devote some of his time to the proposal, and that he hoped that Mr. Markin, individually, would make considerable money as a result of his efforts. After discussion and on motion duly made and seconded, the following resolution was unanimously adopted by the vote of all the directors present, except Mr. Markin, who did not vote:

"Resolved, that this company consents that Mr. Markin may participate in the proposal outlined by him

at this meeting, for the organization of a company
79 which will acquire substantial interests in operating companies;

"FURTHER RESOLVED, that this company consents that Mr. Markin devote some of his time in helping to organize such company, and after its organization in the management of such company or of any of its subsidiary companies or operating companies;

"FURTHER RESOLVED, that this company consents that Mr. Markin may personally acquire subscription rights, stock, options or other rights with respect to securities of such proposed company.

"Mr. Markin thereupon outlined".

I won't read the balance of that portion of it.

Now, I offer what has been marked for identification as Government's Exhibit No. 2. Again, I offer it on the same basis as the previous one. Government's Exhibit 2 consists of the minutes of a special meeting of the board of directors of Checker Cab Manufacturing Company, who is the manufacturer of taxicabs, and which is a defendant in this case, held at 165 Broadway, New York, on the 5th day of April, 1929.

80 MR. KAUFMAN: I make the same objection on behalf of the defendants other than the Checker Cab Manufacturing Company and Markin.

THE COURT: It is received as against Checker Cab Manufacturing Company and Mr. Markin.

MR. HOTCHKISS: Subject to the same conditions as the first one?

THE COURT: Yes. It won't be necessary to repeat it.

(Said document, so offered and received in evidence, was marked Government's Exhibit 2.)

MR. HOTCHKISS: "There were present the following directors, constituting a quorum: Messrs. Markin, Adams, Weiss, Polansky, Ludington, Haveron, Halff, Gillespie and Rothenberger.

"The meeting was held on notice duly given. Mr. Markin acted as chairman and Mr. Haveron acted as secretary of the meeting.

"Mr. Markin stated that, pursuant to discussions which he had had with directors from time to time, he had been working on a plan whereby this company might obtain a substantial production by insuring recurring orders from large operating companies; that for several months back he had been working with Mr.

Ernest H. Miller, the president of Yellow Taxi Cor-
81 poration, New York, for the organization of a company which should, in effect be an amalgamation of that company and other large operating companies; that Sisto & Co. had indicated its willingness to finance a corporation to be known as Parmelee Transportation Company, which would acquire about 68 per cent of the capital stock of the Yellow Taxi Corporation, New York, about 26 per cent of the capital stock of Chicago Yellow Cab Company, Inc., and over 90 per cent of the capital stock of the Parmelee Company; that under the plan the Parmelee Transportation Company would issue $5,000,000 of 6 per cent convertible debentures, $1,000,000 of 6 per cent convertible preferred stock and 250,000 shares of common stock, for the purpose among other things of acquiring the stocks of the operating companies beforementioned; and the stocks of other operating companies; that under the plan, a management company controlled by the Transportation Company would enter into a management contract for the management of the operating companies; that he was to receive compensation at the rate of $25,000 a year
82 for consulting with and advising the management company and the transportation company; that he and Mr. Miller were each to receive options on 25,000 shares of the common stock of the Transportation Company at $30 a share (the same price as the conversion price on the debentures and preferred stock); that it was proposed that this company should invest $1,000,000 in cash in the purchase of $1,000,000 face amount 6 per cent convertible preferred stock which would constitute a security senior to the 250,000 shares of common stock which were to be marketed by Sisto & Co., and their associates; that the bankers of the Transportation Company were insistent that he purchase a substantial block of common stock of the Transportation Company, which he was prepared to do to make the plan possible. Mr. Markin further stated that he and other large stockholders of the company considered the advantages to this company so substantial that they had consented to give to the bankers of the Transportation Company, options on a substantial block of stock of Checker Cab Manufacturing
83 Corporation for a period of one year at a price just above the present market. He further stated that it was proposed that a sales company affiliated with

the Transportation Company would agree with this company to endeavor to promote sales of cabs of this company, and that the plan involved an initial order for 1,000 Checker cabs deliverable over a period of about a year at a price for cash of $1,900 per cab without tires; and that there was every prospect that the transportation company or its sales subsidiary would procure additional substantial orders for Checker cabs; that it was proposed that such sales company should receive a commission of 5 per cent of all orders procured by or through it for Checker cabs, such orders to be either for cash or on credit terms satisfactory to this company, the price to be as good as Checker gives to any other purchasers for similar quantities and on like terms as to credit and specifications; such arrangement to be for a period of five years.

"Mr. Markin stated that he had discussed with a majority of the directors of the company the advis-
84 ability of the investment by the company of $1,000,000 in cash in the convertible preferred stock of the Transportation Company and, having obtained their approval, had entered into an agreement with Sisto & Co. relative to such purchase."

Mr. KAUFMAN: Will you concede at this point that the convertible preferred stock had no voting power, no voting right in the company contemplated?

Mr. HOTCHKISS: I am simply reading what it states here.

Mr. KAUFMAN: I realize that, but for the purpose of proper sequence, so that we don't have to go back to it, won't you concede that this convertible preferred stock had no voting power.

Mr. HOTCHKISS: I don't know.

Mr. KAUFMAN: All right.

The COURT: Proceed.

Mr. HOTCHKISS:

"Mr. Markin stated that he had been advised by counsel that, because members of the organization of Sisto & Co. would be directors of Parmelee Transportation Company, and possibly of some of the operating companies controlled by that corporation and of subsidiaries of that corporation, and because Sisto & Co., as well as he, himself, would be
85 financially interested in that corporation, certain phases of the proposal and the action of the directors thereon would be subject to ratification by the stock-

86 holders. In his opinion, however, the contemplated plan was so essentially for the benefit of this company that there should be no difficulty in obtaining such ratification.

"After discussion, and on motion duly made and seconded, the following resolutions were duly adopted:

"WHEREAS, in the opinion of this Board of Directors the acquisition by Parmelee Transportation Company of a substantial interest in the stocks of Yellow Taxi Corporation, New York, of Chicago Yellow Cab Company, Inc., and of The Parmelee Company and the possible future acquisition of interest in other operating companies will be of substantial benefit to this company; and

"WHEREAS, certain of the stockholders, directors and officers of this company are prepared to assist in the financing of the transportation corporation; and

"WHEREAS, this Board of Directors deems the investment by this company, in $1,000,000 of convertible preferred stock of The Transportation Man-
87 agement Company advisable;

"RESOLVED, that the President of this Company be, and he hereby is authorized to purchase for the sum of $1,000,000 and accrued dividend, $1,000,000 par value of 6 percent cumulative convertible preferred stock of Parmelee Transportation Company;

"FURTHER RESOLVED, that the action of the President of this Company in entering into an agreement with J. A. Sisto & Co. as set forth in the letter addressed to this company, dated March 26, a copy of which has been presented to this meeting, be, and the same hereby is, in all respects approved, ratified and confirmed.

"On motion duly made and seconded, the following resolution was duly adopted:

"RESOLVED, that in order to put Mr. Morris Markin, the President of this Company, in a position to be of assistance to Parmelee Transportation Company, and any management company affiliated with it, this company consents that Morris Markin may render services in an advisory capacity to either
88 of said two corporations or any other corporations associated or affiliated with them.

"FURTHER RESOLVED, that paragraph 'THIRD' of the agreement between Morris Markin and this company, dated June 8th, 1928, be amended so as to read as follows:

'Since Markin was the founder of the business and has since that time been its general manager, and since he is recognized as being a person of unusual and unique ability in the taxicab manufacturing industry, and is thoroughly acquainted not only with the customers of the corporation, but also with its trade methods and secrets, Markin shall devote substantially all of his time and attention to the business of the corporation, and will not directly or indirectly be interested in any company or business competing with the corporation or its business, during the said period of three years; and that should he during said period voluntarily leave the corporation, or in any other manner violate the terms of his agreement with
89 the corporation, he will not, during the balance of the term thereof, become directly or indirectly interested, as officer; stockholder, executive, general manager, agent, representative, employee, partner, in an advisory capacity or otherwise, in any company, concern or business dealing in any manner in the business of manufacturing, buying, selling or otherwise disposing of taxicabs or other commercial vehicles or hold himself out as having had any connection with Checker Cab Manufacturing Corporation or any of its subsidiaries; and in the event of any such violation, the corporation shall be entitled to equitable relief, by injunction or otherwise, in addition to its remedies at law; provided, however, that nothing herein contained shall be deemed or construed to prevent said Markin from becoming interested, as a stockholder or otherwise, in Parmelee Transportation Company (a Delaware corporation) or The Transportation Management Corporation (a Delaware cor-
90 poration) or any other corporation engaged in the operation or management of taxicabs or other motor vehicles, so long as said Markin shall continue to devote his efforts towards promoting the sales of the products of the corporation and so long as he shall continue to devote substantially

all of his time and attention to the business of the corporation.'

"On motion duly made and seconded, the following resolutions were duly adopted:

"RESOLVED, that the President or a Vice-President of this Company be and he hereby is authorized to make, execute and deliver an agreement with Parmelee Transportation Company, or such subsidiary sales company as may be organized by it, to pay a commission of five percent on the net sales price to such sales company for all orders or contracts for the purchase of Checker Cabs procured by the Parmelee Transportation Company or its sales subsidiary, or through the efforts of either of them.

91 "FURTHER RESOLVED, that such commissions of five percent be paid with respect to cabs which may be delivered under a prospective initial order for 1,000 cabs from Yellow Taxi Company, of Chicago.

"Mr. Markin stated that he had recommended to those responsible for the organization of Parmelee Transportation Company that the firm of Chadbourne, Hunt, Jaeckel & Brown should act as counsel for that company and that he expected such recommendation to be accepted. He stated, however, that Mr. Jaeckel had expressed a wish that if his firm were to act in that capacity, such designation be made subject to the approval of the Board of Directors of this company.

"On motion duly made, seconded and carried, the following resolution was adopted:

"RESOLVED, that this company consent that the firm of Chadbourne, Hunt, Jaeckel & Brown may, if designated, act as counsel for Parmelee Transportation Company and/or any of its subsidiaries or affiliated companies."

92 Now, I offer what has been marked for identification as Government's Exhibit 3, consisting of the minutes of the annual meeting of the stockholders of Checker Cab Manufacturing Corporation held in the principal office of the corporation in the State of New Jersey, 15 Exchange Place, Jersey City, New Jersey, on the 17th day of July, 1929.

Mr. KAUFMAN: And I make the same objection on behalf of the defendants other than Checker Cab Manufacturing Company and Morris Markin

The COURT: Same ruling.

(Said document, so offered and received in evidence was marked Government's Exhibit 3.)

Mr. HOTCHKISS:

"Mr. Markin, President of the Corporation, called the meeting to order and presided thereat. Mr. Haveron, the secretary of the corporation, acted as secretary of the meeting and kept the minutes thereof.

"The secretary then called the roll and it was found that the following stockholders holding the number of shares of stock set opposite their respective names were present in person."

And in that group, I call attention particularly to Morris Markin with 22,367 shares.

93 "The proxies were then presented to the meeting and examined."

Mr. KAUFMAN: Will you stipulate at this point, Mr. Hotchkiss, there were 375,000 shares of Checker Cab Manufacturing Company outstanding at the time?

Mr. HOTCHKISS: I will read what is set forth here.

"The secretary then stated that the stockholders holding 204,558 shares without nominal or par value of the capital stock of this corporation out of 375,000 shares issued and outstanding were present in person or represented by proxy."

Mr. KAUFMAN: Of which Mr. Markin owned approximately 22,000 shares of stock.

Mr. HOTCHKISS: Very well.

"The Chairman then stated that one of the purposes of this annual meeting was to elect four directors to fill the vacancies caused by the expiration of the terms of the directors whose terms expire in the year 1929, the same being Jacques Moos, Jack Polansky, Mayer L. Halff, and Eugene F. Gillespie. The following gentlemen were thereupon nominated directors of

94 this corporation for the term of three years such term to expire at the annual meeting of the stockholders in the year 1932.

"Jack Polansky

"E. T. Gillespie

"Jacques Moos

"Albert F. Jaeckel.

"There were no further nominations for directors.

"The chairman then announced that Messrs. Jack Polansky, Jacques Moos, Eugene F. Gillespie and Al-

bert F. Jaeckel had been elected directors of this corporation.

"The chairman pointed out to the stockholders present at the meeting that this corporation had purchased $1,000,000 par value of 6½ percent convertible preferred stock of Parmelee Transportation Company, a Delaware corporation, which had been organized for the purpose of holding the stocks of and managing through a subsidiary, companies operating taxicabs, such preferred stock being all the issued and outstanding preferred stock of said company. He further
95 stated that he deemed this purchase to be extremely advantageous in supplying a connection for marketing the products of this corporation, and that the Board of Directors had approved this purchase. He further stated that with the knowledge and consent of the Board of Directors he individually had purchased a large block of common stock of Parmelee Transportation Company and had likewise entered into a contract to render services to its managing subsidiary, The Transportation Management Corporation. He further stated that he had an option to purchase a large block of additional common stock of Parmelee Transportation Company and had acted as a syndicate participant in the offering of the convertible gold debentures and common stock of said company. He also called the attention of the stockholders to the fact that Mr. F. L. Haveron was a director and secretary and treasurer of Parmelee Transportation Company, and that Mr. Graham Adams, a director of this corporation, was
96 also a director of the Parmelee Transportation Company, that Mr. Adams was also a partner in Messrs. J. A. Sisto & So., and that Mr. Haveron and Mr. Ludington were associated with that firm, which managed and participated in the syndicate which had offered the securities of Parmelee Transportation Company and which, in November, 1928, had underwritten an offering by this corporation of shares of stock to its stockholders."

At this time I will turn the reading over to Mr. Williams, my associate.

The Court: The Court will recess at this time for ten minutes.

(Recess taken.)

97 The COURT: I received some documents from the office of Winston, Strawn & Shaw pertaining to the Parmelee Transportation Company. I don't know whose those are.

Proceed.

Mr. WILLIAMS: I offer as Government's Exhibit 4 minutes of the first meeting of the board of directors of Parmelee Transportation Company, which was held at the office of J. A. Sisto & Co., No. 68 Wall Street.

Mr. LYNTON: The objection offered in connection with this document is that it is not binding against anybody other than Parmelee.

Mr. WILLIAMS: This is the first meeting of the board of Parmelee.

The COURT: I won't be able to rule on this until I read the exhibit.

Mr. WILLIAMS: Shall I go ahead and read the exhibit?

The COURT: Yes, go ahead and read it.

Mr. WILLIAMS: The exhibit states:

"The first meeting of the Board of Directors of Parmelee Transportation Company, a Delaware corporation, was held at the office of J. A. Sisto & Co.,
98 No 68 Wall Street, New York City, on the 16th day of April, 1939, . . .

"The following directors were present:

"Messrs: ERNEST H. MILLER
GRAHAM ADAM
WM. R. DERBY
F. L. HAVERON
MORELL W. GAINES."

I would like to point out at this point that Government's Exhibit 2 shows that Ernest H. Miller was the President of Yellow Taxi Corporation of New York; Government's Exhibit 3 shows that Graham Adams was a director of C. C. M. and also of Sisto & Company; and that F. L. Haveron was a director of C. C. M. and also of Sisto & Company.

The exhibit goes on to state:

"being all of the members of the Board of Directors of the Company."

I will skip down to the paragraph below the middle of the page, beginning:

"The Chairman then presented to the meeting an offer, in the form of a letter addressed to this Company under date of April 17, 1929, of J. A. Sisto & Co., to transfer to this Company certain contracts

therein described for the purchase of stock of
99 Chicago Yellow Cab Company, Inc., the Parmelee Company and Yellow Taxi Corporation, New York, (said contracts being hereinafter collectively called the purchase contracts), a copy of which letter is as follows:

"April 17, 1929.

Parmelee Transportation Company,
7 West 10th Street,
Wilmington, Delaware.

Dear Sirs:

"We have entered into the following contracts, all dated March 2nd, 1929, copies of which together with their exhibits are enclosed herewith:

(a) With Mr. Charles A. McCulloch for the purchase of (1) not less than 100,000 and not more than 120,000 shares of the stock of Chicago Yellow Cab Company, Inc., at the price of $35 per shares, and (2) not less than 15,000 and not more than 20,000 shares of the stock of The Parmelee Company at the price of $100 per share.

(b) With Mr. Ernest H. Miller for the purchase
100 of not less than 52,000 and not more than 49,000 shares of the stock of Yellow Taxi Corporation, New York, at the price of $32.50 per share.

(c) With Mr. Charles A. McCulloch for the purchase of not less than 30,000 and not more than 56,000 shares of the stock of Yellow Taxi Corporation, New York, at the price of $35 per share.

Pursuant to the terms of said contracts between Mr. Charles A. McCulloch and ourselves, Mr. McCulloch has notified us that he will deliver to us and has thereby become obligated to deliver to us upon the terms of said contracts the following shares of stock:

Name of Company	*No. of Shares*
Chicago Yellow Cab Company Inc.	106,819
The Parmelee Company	19,300
Yellow Taxi Corporation, New York	38,000

"Pursuant to the terms of said contract between Mr. Ernest H. Miller and ourselves, Mr. Miller has notified us that he will deliver to us and has thereby become obligated to deliver to us on the terms of said contract 47,659 shares of the stock of Yellow Taxi Corporation, New York.

101 "Certified audits and financial statements, together with other statements regarding the condition of the three companies whose stocks we have agreed to purchase or find purchasers for pursuant to the above contracts are annexed to the copies of said contracts enclosed herewith.

"We hereby offer to transfer to you at and for the sum of $1 all of our rights and obligations under said three contracts, you agreeing.

(a) to assume all of our obligations under said contracts and to accept and pay for the shares of stock which the sellers thereunder are obligated to deliver to us thereunder as above indicated, all upon the terms and conditions of said contracts;
(b) to indemnify us against any liabilities or claims on the part of the sellers under said contracts or any of them; and
(c) to pay any charges or expenses which we may certify to you that we have incurred for fees of experts and counsel or otherwise in connection with the business.

102 "We also enclose herewith a proposed draft of temporary Debenture to be dated April 1, 1929, to mature April 1, 1944, and to be issued by you under a Trust Indenture between you and Guaranty Trust Company of New York, as Trustee, dated April 1, 1929, and if you accept our offer herein contained it is understood that the Debentures which you agree to sell to us shall be in substantially the form of the enclosed draft of temporary Debenture. The form and terms of the Trust Indenture securing the Debentures shall be satisfactory to us.

"In the event of your accepting our offer herein expressed and carrying out said purchase of the number of shares of stock of Chicago Yellow Cab Company, Inc., The Parmelee Company, and Yellow Taxi Corporation, New York, indicated above, we agree to purchase or cause to be purchased from you and you agree to sell to us or to purchasers found by us $5,000,000, principal amount, of your 6% Sinking Fund Convertible Debentures (in substantially the form of the temporary debentures enclosed herewith) 10,000 shares of your 6% Cumulative Convertible
103 Preferred Stock of the par value of $100 per share and 250,000 shares of your Common Stock without

par value, all for the sum of $10,000,000 plus accrued interest on said Debentures and accrued dividends on said Preferred Stock to the date of delivery thereof. All of said shares are to be issued as fully paid and nonassessable. Said purchase shall include the 50 shares of your Common Stock subscribed for by the subscribers to your Certificate of Incorporation and payment therefor shall be taken as payment of the amount due on said subscription so that at the conclusion of said purchase your total stock, outstanding or subscribed for, shall be 10,000 shares of Preferred Stock and 250,000 shares of Common Stock.

"We also enclose herewith a proposed draft of option agreement between yourselves and ourselves providing for the granting of options to us to purchase 100,000 shares of Common Stock of your Company and it is understood that if you accept our offer herein contained you will, on or before the delivery date for
104 your said securities, execute and deliver to us an agreement in substantially said form.

"Said contracts with Messrs. McCulloch and Miller call for the delivery of stock thereunder against payment, not later than April 29, 1929; and for your Debentures, Preferred Stock and Common Stock, purchased or caused to be purchased by us hereunder, payment is to be made to you at the same time that you make payment under said contracts with Messrs. McCulloch and Miller, against the delivery by you to such person or persons as we may direct of said Debentures, the certificates for said Preferred Stock and Common Stock (such certificates being registered in such name or names and being in such denominations as we shall request in writing) and a duly executed copy of said option agreement. You are to give us one day's written notice of the time and place where payment and delivery for the Debentures, Preferred Stock and Common Stock purchased by us hereunder is to be made. * * *

105 "In the event you accept our offer herein expressed, our obligation to carry out this contract with you shall be subject to the approval of our counsel as to all legal proceedings taken to authorize the issue and delivery by you in accordance with the terms hereof, of said Debentures; Preferred Stock and Common

Stock, and the execution and delivery by you of said Option Agreement and all other matters in the premises.

"Upon receipt by us of your written acceptance of the offer herein contained, this letter shall be deemed to constitute for all purposes an assignment to you of said contracts between Mr. McCulloch and ourselves and said contract between Mr. Miller and ourselves on the terms and subject to the conditions herein expressed.

"Very truly yours,

"J. A. Sisto & Co."

Then follows a form of agreement dated the 17th day of April, 1929, between Parmelee Transportation Company and J. A. Sisto & Co., to carry out the letter agreement which is proposed by J. A. Sisto & Co., which I have just read. I will skip that part of the agreement and
106 start in the middle of page 14:

"After full discussion, on motion, duly made and seconded, the following preambles and resolutions were adopted (by the votes of all of the directors of the Company, except Mr. Adams who did not vote on this matter):

"Whereas this Company has been organized under the laws of the State of Delaware for the purpose, among other things, of acquiring stocks of other corporations engaged in the transportation business and Chicago Yellow Cab Company, Inc., the Parmelee Company and Yellow Taxi Corporation, New York, are corporations engaged in the transportation business;

• • •

"Whereas J. A. Sisto & Co. have, by a letter addressed to this Company under date of April 17, 1929, and submitted to this meeting, offered to transfer to this Company upon certain conditions their rights under the purchase contracts therein described, to purchase 106,819 shares of the capital stock of Chicago Yellow Cab Company, Inc., a New York corporation,
107 19,300 shares of the capital stock of The Parmelee Company, a Delaware corporation, and 85,659 shares of the capital stock of Yellow Taxi Corporation, New York, a New York corporation, being more than 26% of the outstanding stock of Chicago Yellow Cab Company, Inc., more than 96% of the outstanding stock

of The Parmelee Company and more than 68% of the outstanding stock of Yellow Taxi Corporation, New York, and it is in the opinion of the Board of Directors of this Company expedient and desirable that this Company should acquire said stocks upon the terms and conditions of said offer; * * *

"Resolved that this Company accept said offer of J. A. Sisto & Co. and acquire said purchase contracts on the terms stated in the letter of J. A. Sisto & Co. to this Company dated April 17, 1929, and submitted to this meeting;"

Then follows some resolutions carrying out the details of the transaction. I will skip down to the paragraph at the bottom:

"The Chairman then stated that certain individuals interested in the organization of this Company had
108 caused to be organized under the laws of the State of Delaware a corporation known as The Transportation Management Corporation with an authorized capital consisting of 1,000 shares of stock without par value, all of the same class and that the organization proceedings of said Corporation had been approved by counsel.

"He then stated that it was proposed for the Company to subscribe to all of the authorized stock of The Transportation Management Corporation and to employ said Corporation in the management of corporations in which this Company may acquire stock, as well as other corporations, under management and other favorable contracts, which those interested in the organization of this Company had negotiated and intend to negotiate.

"Thereupon, on motion duly made and seconded, the following resolutions were unanimously adopted:

"Resolved that this Company subscribe to all of the authorized stock of The Transportation Manage-
ment Corporation, a Delaware corporation, being
109 1000 shares of stock without par value and all of the same class, for such sum as the President of this Company shall determine, not in excess, however, of the sum of $200,000;

"Resolved that the Treasurer of this Company be, and he hereby is, authorized and directed to cause to be paid out of the funds of this Company all of the expenses incurred, and disbursements made, in connection with the organization of Transportation Manage ment Corporation."

That is all I wish to read.

We submit Government's Exhibit 5 should be admitted against all defendants, and particularly against C. C. M. and Markin, because it shows that Parmelee was engaged in a single unified course of action along with C. C. M. and Markin.

Government's Exhibit 1 showed the object of the formation of Parmelee by C. C. M. and Markin was to secure a market for the sale of cabs. We find here Parmelee stating:

"And Chicago Yellow Cab Company, Inc., the Parmelee Company and Yellow Taxi Corporation, New York,"—

that shows that Parmelee was actually organized to
110 carry out the plan of which we saw the genesis in Exhibit 1.

We believe it would be simpler if all evidence was admitted against all defendants, subject to connection at the end of the case. Then if at that time defendants feel we have not adequately connected any of the defendants into the case they may make a motion to have the evidence stricken against those they think are not connected. We think at this time certainly Parmelee, C. C. M. and Markin are connected.

Mr. Lynton: So far as the proposed document is concerned, it is merely the minutes of a meeting of the defendant Parmelee. None of the other defendants are present in their separate capacities. The government's argument that these minutes themselves link the other defendants is merely an assumption that if these matters are binding against the other defendants then the other defendants are linked. The objection is that these are minutes of one corporation.

The Court: It seems to me to be more practical to admit it subject to the government being able to connect it up, and then at the conclusion of the government's case
111 motion will be in order to change the court's present attitude. In other words, as I see it now, I think it would be more practical.

This is a conspiracy charge and the government should be allowed latitude in presenting its evidence and in the order in which it is presented, and the court should be more liberal than in the ordinary type of case. I do not feel that would prejudice the rights of the defendants in any way.

So the court's ruling will be that they are received subject to defendants' objection.

(Said documents, so offered and received in evidence, were marked, respectively, Government's Exhibits 4 and 5.)

Mr. Lynton: May it be deemed, with respect to Defendants other than Parmelee, with respect to these and the other documents which are documents of Parmelee, that those defendants may have a standing objection without the necessity of making separate objections?

The Court: Yes. That would be consistent with the court's past ruling and future rulings. You don't have to keep repeating it.

112 Mr. Lynton: May it likewise be deemed, with respect to all defendants, that they may have a like standing objection when documents not prepared by them are offered by the government?

The Court: They are received and the objections will be further considered at the conclusion of the government's case.

Mr. Lynton: In connection with this last proposed exhibit, Government's Exhibit 4, there is omitted from the excerpt contained in the book presented to your Honor a paragraph which I ~~should like~~ to read, if I ~~may, for~~ the record.

The Court: Which you think ought to be included?

Mr. Lynton: Which we think ought to be included.

The Court: All right.

Mr. Williams: It is all right.

The Court: You may read it.

113 Mr. Lynton:

> "In addition to conforming to the specifications above set forth, the terms of said Debentures, said Preferred Stock and said Common Stock shall conform to the descriptions thereof contained in the enclosed draft of prospectus letter (and the balance sheet printed on the back thereof) describing said securities, which letter, signed by your President, we shall be authorized by you to use in connection with the sale of said securities."

This draft prospectus is mentioned in this exhibit.

Two exhibits later there is a reference to the prospectus in the final form, and the defendants, all the defendants will object to the reception both of Government's Exhibit 4 and the later exhibit, Government's Exhibit 6, unless the prospectus is part of the exhibit, on the ground that it is an incomplete document.

Mr. WILLIAMS: As I understand it, the prospectus is referred to some place in Exhibit 4 as being attached to the minutes?

Mr. LYNTON: That is right. I have just read—

114 Mr. WILLIAMS: If you have the prospectus, we will be glad to add it.

Mr. LYNTON: All right. Here is a photostatic copy.

Mr. WILLIAMS: Upon your statement that it is referred to as part of the minutes and if the minutes so state it is attached, we will consider it attached and make it a part of Exhibit 4.

Mr. LYNTON: Correct.

May the record therefore show that a prospectus dated April 17, 1929, which consists of four pages be deemed part of Government's Exhibit 4 and part of the Government's later Exhibit No. 6?

Mr. WILLIAMS: As I understand it, these four pages which you have just handed me are the draft letter or the final letter.

Mr. LYNTON: The final letter.

Mr. WILLIAMS: Should it not then be excluded from Exhibit 4 and be in Exhibit 6, which refers to the final letter?

Mr. LYNTON: That is agreeable, with the stipulation that the draft is a draft of that final prospectus.

Mr. WILLIAMS: If you have the draft, we will

115 add it then to Exhibit 4.

Mr. LYNTON: We do not have the draft.

Mr. WILLIAMS: Then do you withdraw your objection to Exhibit 4 as being incomplete?

Mr. LYNTON: On condition that this is part of Exhibit 6, yes.

Mr. WILLIAMS: All right.

I should like now to read from the excerpts from Government's Exhibit 5, being minutes of a directors meeting of the board of directors of Parmelee Transportation Company, also held at the office of J. A. Sisto & Co., 68 Wall Street, New York, on April 29, 1929. I wish to skip the first two paragraphs of the excerpt.

"The Chairman stated that it was proposed for the Board of Directors to ratify the action of officers of the Company in executing in the name of the Company an Agreement dated April 29, 1929, between Ernest H. Miller, Parmelee Transportation Company and J. A. Sisto & Co. modifying agreements previously entered into between Ernest H. Miller and J. A. Sisto & Co., dated March 2, 1929 and April 16, 1929, respectively,

116 and an agreement previously entered into between J. A. Sisto and Parmelee Transportation Company dated April 17, 1929."

Then follows the agreement. I do not wish to read the balance of this exhibit. It refers generally to adjustments of numbers of shares of stock of the cab operating companies that are to be purchased by Parmelee, and the details of payment with relation to them.

I offer as Government's Exhibit 6 minutes of the board of directors of Parmelee Transportation Company, April 26, 1929, also held at the office of J. A. Sisto & Co. I will make a part of Exhibit 6 the stock prospectus which counsel states is referred to in the minutes.

(Said document, so offered and received in evidence, was marked Government's Exhibit 6.)

Mr. WILLIAMS: Skipping the first paragraph or two:

"The Chairman then presented to the meeting for ratification the following agreement, which had been entered into between the Company and J. A. Sisto & Co. under date of April 17, 1929, and the covenants
117 of which on the part of the Company form a part of the consideration for the agreement of J. A. Sisto & Co. to purchase the securities of the Company as authorized at the meeting of the Board held on April 16, 1929. Said agreement is as follows:—"

I will not read the agreement. In general, it appoints Sisto & Co. as bankers for Parmelee, and shows that the agreement stated in Government's Exhibit 4 between Parmelee and Sisto was entered into.

I will read again near the bottom of page 20, after the stars.

"The Chairman then stated that officers of the Company had caused to be organized under the laws of the State of Delaware, a corporation known as Automotive Sales Corporation, with an authorized capital stock of 1,000 shares without par value, all of the same class, and that it was proposed for the Company to subscribe for all of the authorized capital stock of said Corporation.

"After discussion, on motion duly made and sec-
118 onded, the following resolutions were unanimously adopted:

"RESOLVED that this Company subscribe to all of the authorized stock of Automotive Sales Corporation, a Delaware corporation, being 1,000 shares without par value, all of the same class, for the sum of $1,000 in cash;

"Resolved that the Treasurer of this Company be, and he hereby is, authorized and directed to cause to be paid out of the funds of this Company all of the expenses incurred, and disbursements made, in connection with the organization of Automotive Sales Corporation."

I now come to the employment contracts between Markin and Miller and Parmelee.

Mr. Lynton: May I, if the Court please, to complete Government's Exhibit 6, read in a portion of that exhibit which is omitted from the excerpt handed to your Honor?

The Court: You may.

Mr. Lynton:

"The Chairman then submitted to the meeting a copy of the prospectus letter dated April 17, 1929,
119 written by Ernest H. Miller, as President of the Company, to Messrs. White, Weld & Co. and J. A. Sisto & Co. describing the securities sold by the Company to J. A. Sisto & Co. He then stated that it was proposed for the Board of Directors to formally approve and ratify the action of the President in writing said letter.

"Thereupon, the motion duly made and seconded, the following resolution was unanimously adopted:

"Resolved that the action of Ernest H. Miller, President of this Company, in writing the letter dated April 17, 1929, to Messrs. White, Weld & Co. and J. A. Sisto & Co., a copy of which has been submitted to this meeting be, and it hereby is, in all respects approved and ratified."

120 Mr. Williams: I offer as Government's Exhibit 7, minutes of a meeting of the Board of Directors of the Parmelee Transportation Company on April 18, 1929, also at the office of J. A. Sisto & Co.

(Said document, so offered and received in evidence, was marked Government's Exhibit 7.)

Mr. Williams: I call the Court's attention to the fact that Ernest H. Miller was one of the directors present at that meeting.

The document states:

"Mr. Ernest H. Miller, Chairman of the Board, called the meeting to order and presided, and Mr. F. L. Haveron, Secretary of the Company, acted as Secretary of the Meeting.

"The Chairman then stated that it was proposed for the Company to authorize the execution by The Transportation Management Corporation of employment contracts with Messrs. E. H. Miller and Morris Markin, respectively. He thereupon presented to the meeting drafts of proposed contracts, copies of which are as follows:—"

121 I will not read all the terms of the contracts. They relate to an agreement to pay Miller $50,000 to act as President of Yellow Taxi of New York, and to manage Parmelee and Transportation Management.

The second agreement begins on page 23, and states:

"AGREEMENT, dated the ..... day, of April, 1929 between the Transportation Management Corporation, a corporation organized under the laws of the State of Delaware, party of the first part, (hereinafter referred to as the 'Corporation', and Morris Markin, of the City of New York, party of the second part, hereinafter referred to as 'Mr. Markin'),

WITNESSETH:

"The Corporation is a subsidiary of Parmelee Transportation Company, a Delaware corporation. It is desirous of engaging the services of Mr. Markin in an advisory capacity, for a period of two years, and Mr. Markin is prepared to act in such capacity.

"NOW, THEREFORE, in consideration of the sum of one dollar ($1.00) paid by the Corporation to Mr. Markin, and in consideration of the mutual cove-

122 nants and agreements herein contained, the parties hereto agree as follows:

"I. The Corporation hereby engages the services of Mr. Markin in an advisory capacity in connection with its business of managing companies operating taxicabs and other motor vehicles, such employment to be for a period of two years, beginning May 1, 1929. The Corporation agrees to pay Mr. Markin as compensation for such services the sum of Twenty-five Thousand Dollars ($25,000) per annum during said period, payable in equal monthly installments on the last day of each month.

II. Mr. Markin agrees to act in an advisory capacity to the Corporation in its management of such companies operating taxicabs and other motor vehicles as it may manage during the period aforesaid; and he agrees from time to time to consult with Mr.

Ernest H. Miller, President of the Corporation and of Parmelee Transportation Company, and with the other executive officers and directors of said two companies and of subsidiaries and affiliated companies of
123 Parmelee Transportation Company. It is understood, however, that Mr. Markin's services shall be merely those of an expert to be consulted in an advisory capacity, and that there is no obligation on his part to devote any specified or substantial portion of his time in rendering the services aforesaid.

"After full discussion, upon motion duly made and seconded, the following resolutions were adopted (Mr. Miller not voting):

"Resolved that the drafts of proposed employment contracts between The Transportation Management Corporation and Ernest H. Miller and Morris Markin, respectively, which have been submitted to this meeting be, and they hereby are, in all respects approved;

"Resolved that this Company approves of the execution by The Transportation Management Corporation of contracts with Messrs. Ernest H. Miller and Morris Markin, respectively, in substantially
124 the respective forms submitted to this meeting."

I will skip down to near the bottom of page 26 of this exhibit. It relates to giving of stock purchase options to Markin and Miller, that is, to purchase the stock of Parmelee. Beginning with the resolution at the bottom of page 26:

"Resolved that the drafts of proposed option agreements between this Company and Ernest H. Miller and Morris Markin, respectively, which have been submitted to this meeting be, and they hereby are, in all respects approved;

"The Chairman then submitted to the meeting drafts of proposed contracts to be executed between The Transportation Management Corporation and Yellow Cab Company (Maine), The Parmelee Company and Yellow Taxi Corporation, New York, respectively, copies of which are as follows:

"Memorandum of Agreement made this 29th day day of April, 1929, by and between Yellow Cab Company, a corporation organized and existing under the laws of the State of Maine, (hereinafter referred to as the 'Corporation')—"

125 I might point out that this is the Yellow Cab Company that is a defendant in this case and which operates the Yellow Cab Company in Chicago.

"MEMORANDUM OF AGREEMENT made this 29th day of April, 1929, by and between Yellow Cab Company, a corporation organized and existing under the laws of the State of Maine, (hereinafter referred to as the 'Corporation'), party of the first part, acting for itself and for each subsidiary now existing or hereafter acquired or organized of the Corporation or of Chicago Yellow Cab Company, Inc., a corporation organized and existing under the laws of the State of New York (which owns all of the capital stock of the Corporation, with the possible exception of qualifying shares), including Benzoline Motor Fuel Co., a corporation organized and existing under the laws of the State of Illinois, (the Corporation and such subsidiaries being hereinafter referred to collectively as the 'Companies'), and The Transportation Management Corporation, a corporation organized and existing under the laws
126 of the State of Delaware (hereinafter called the 'Management Corporation'), party of the second part,

WITNESSETH:

"In consideration of the mutual covenants herein contained, the parties hereto agree as follows:

"The Management Corporation will furnish to the Corporation and each of the Companies, its services, from time to time, in connection with the management, operation and development of the Corporation and each of the Companies and their properties, as follows:

"I. The Management Corporation will place at the service of the Companies its combined experience, advice and assistance and will aid in the solution of such problems as may arise in connection with the conduct of the business of the Companies and the operation of their properties and equipment.

"II. The Management Corporation will furnish the services of its Auditing Department and its operating experts to review the accounting operations
127 and methods of the Companies, and to recommend improved or new methods, with a view to reducing the operating cost of the Companies. The books

and records of the Companies, including all books of account and statistical records, shall at all times be open to examination and inspection by the Management Corporation and its representatives.

"III. The Management Corporation will manage and supervise the purchasing departments of the Companies in the purchase of supplies, materials and equipment that may be authorized. The Management Corporation shall initiate and make recommendations to the executive officers and/or directors of the Companies concerning such purchases, and none of the Companies or their officers shall enter into any agreements or give any orders for any such purchases, for amounts involving more than $500., without submitting the same in advance to, and consulting with the Management Corporation with respect thereto, and either obtaining the approval of the Management Corporation or in-
128 structions from the Board of Directors of the particular Company for which such purchase is to be made."

Mr. LYNTON: If I may interrupt for a moment, your Honor, I think it may be helpful, since there is an absolute statement contained in the government's trial memorandum and an absolute statement made by Mr. Hotchkiss that any of the particular companies, the operating companies, might not make any purchases without the permission of the management company, to point out that this contract on which reliance is made does not provide that. It provides explicitly that the particular company may make any purchases, even in excess of $500, if one of two alternatives exists; either obtaining the approval of the management corporation, or instructions from its own board of directors.

May I also ask at this time, in view of a discussion held during recess, that the government concede that the preferred shares of Parmelee, purchased for $1,000,000 by C. C. M., were without any voting power?

Mr. WILLIAMS: On your statement we will so stipulate, subject to any check that we might make.

Mr. LYNTON: Very well.

Mr. WILLIAMS: "IV. The Management Corpora-
129 tion will furnish the services of its statistical experts to analyze the financial and operating reports of the Companies and to compare the operations shown therein with those obtained by other companies, in or-

der that any uneconomical operations may be ascertained, investigated and corrected.

"V. The Management Corporation will furnish the services of its representatives in supervising the insurance necessary on the properties of the Companies.

"VI. The Management Corporation will consult with and advise the executive officers of the Companies in promoting public relations and any modifications of existing fare schedules; and it will consult with and advise the executive officers and directors of the Companies concerning their finances and financial requirements.

"VII. The Management Corporation will employ on behalf of the Companies, and will supervise the activities of, the departmental heads and superintendents of the Companies. It will also advise concerning the relations between the Companies and its
130 employees (other than executive officers) and will assist in the selection of such employees and the fixing of the rates of compensation and wages to be paid to such employees. The Management Corporation shall have power to remove and discharge any employee of the Companies other than executive officers.

"VIII. The Management Corporation shall advise and assist on any special technical problems arising in connection with any of the properties and equipment of the Companies, in instructing employees in the most economical method of operation, in the purchase and installation of new equipment, and shall supervise the preparation of specifications, contracts, purchase agreements, forms, certificates or other documents required in the purchase of equipment, supplies and materials.

"IX. The Management Corporation shall supervise the advertising policy of the Companies; and it shall negotiate the making and renewal of leases on premises necessary or suitable to the business of the Companies. No officer or executive of any Company
131 shall enter into any lease for the rental of premises without first consulting with the Management Corporation with respect thereto and either obtaining the approval of the Management Corporation or the approval of the directors of the Company for which such lease is to be made.

"X. The Companies, and their officers, executives and employees shall at all times consult, fully cooperate and advise with the Management Corporation and its officers and representatives concerning matters with respect to which the Management Corporation is employed under the terms of this agreement.,

"XI. All contracts and orders placed by the Management Corporation, at the request of the Companies, shall be in the name of the Corporation, or of any such subsidiary, as the case may be. The Management Corporation shall be considered as acting solely as agent and is to assume no pecuniary liability under or by reason of any such obligation.

"XII. The Corporation, on behalf of itself and the
132 Companies, hereby employes the Management Corporation for each and every of the purposes for which the Management Corporation agrees to render its services under the terms of this Agreement.

"XIII. As compensation for the services to be rendered by the Management Corporation to the Companies herein, the Corporation agrees to pay or cause to be paid to the Management Corporation the following sums:

(1) The sum of $50,000, per annum, payable in equal monthly installments, beginning from the date of this agreement."

I won't read that second part of the consideration. It relates to the Management Corporation getting a bonus if the earnings of Yellow and Benzoline pass a certain mark.

We will skip page 30.

I wish to call attention to paragraphs XVI and XVII on page 31:

"XVI. The term of this agreement shall be from the date hereof to December 31, 1930, inclusive.

"XVII. All services to be rendered by the Management Corporation under this agreement shall be
133 subject to the direction and control by the Board or Boards of Directors of the Corporation, and/or one or more of the Companies for which such services are to be rendered."

I will omit the rest of that agreement. On page 32 there is a somewhat similar management agreement with the Parmelee Company. It is substantially the same as the agreement with the Yellow, except that the payment is only $25,000 per year, and there is no bonus in respect to earnings.

On page 36 there is an agreement between the Management Corporation and Yellow Taxi Company of New York. That is the company of which Ernest H. Miller was president. Also between that company and the Management Corporation. I wish to read the paragraph beginning under the word "Witnesseth." This paragraph is not in the Yellow and Parmelee Company agreements.

"The Management Corporation has been organized for the purpose, among other things, of engaging in the business of assisting in the management of motor transportation companies. It expects to receive compensation from companies to which it renders such assist-
134 ance, Parmelee Transportation Company, a Delaware Corporation, owns all of the capital stock of the Management Corporation. Parmelee Transportation Company expects that it or a sales company controlled by it will reserve commissions from manufacturers of cabs and other motor vehicles, including Checker Cab Manufacturing Corporation, who sell or may sell their products to the Corporation."

The rest of the agreement is substantially like the Yellow Cab agreement, except the compensation is $50,000 per year, and there is also a bonus of earnings in this one.

135 I wish to skip down to page 41, following the end of the agreement.

"After full discussion, upon motion duly made and seconded, the following resolutions were unanimously adopted:

"Resolved that the drafts of proposed management contracts between The Transportation Management Corporation and Yellow Cab Company (Maine), The Parmelee Company and Yellow Taxi Corporation, New York, respectively, which have been submitted to this meeting, be, and they hereby are, in all respects approved;

"Resolved that this Company approves of the execution by The Transportation Management Corporation of contracts with Yellow Cab Company (Maine), The Parmelee Company and Yellow Taxi Corporation, New York, respectively, in substantially the forms of the respective drafts of contracts submitted to this meeting."

I offer as Government's Exhibit 8 minutes of a special meeting of the Board of Directors of Parmelee Transportation Company, held at 1775 Broadway, New York.

136 (Said document, so offered and received in evidence, was marked Government's Exhibit 8.)

Mr. WILLIAMS: Note, among those present at this meeting, were Morris Markin as well as Ernest Miller. At this time Mr. Markin had become Chairman of the Board of Directors of Parmelee.

It states.

"Mr. Markin, Chairman of the Board of Directors, called the meeting to order and acted as Chairman thereof."

I will then skip the rest of that paragraph, and the next two paragraphs.

"The Secretary then called the attention of the meeting to the fact that the employment contracts executed by The Transportation Management Corporation, a subsidiary of this Corporation, with Messrs. Ernest H. Miller and Morris Markin would expire the 1st day of May, 1931.

"After discussion and upon motion duly made and seconded, the following resolutions were unanimously adopted (Mr. Marking not voting):

137 "RESOLVED that The Transportation Management Corporation, a wholly owned subsidiary of this Corporation, is authorized, directed and empowered to renew the employment contract between it and Mr. Morris Markin on identically the same terms as the employment contract now existing between it and Mr. Markin, for a further period of two (2) years from and after May 1, 1931;

• • •

"After discussion and upon motion duly made and seconded, the following resolutions were unanimously adopted (Mr. Miller not voting):

"RESOLVED that The Transportation Management Corporation, a wholly owned subsidiary of this Corporation, is authorized, directed and empowered to renew the employment contract between it and Mr. Ernest H. Miller on identically the same terms as the employment contract now existing between it and Mr. Miller, for a further period of two (2) years from and after May 1, 1931."

138 I offer as Government's Exhibit No. 9 an agreement dated May 1, 1931, between the Transportation Management Corporation and Morris Markin.

(Said document, so offered and received in evidence, was marked Government's Exhibit 9.)

I will skip the first three paragraphs down to the first paragraph, Roman Numeral I.

"The corporation hereby engages the services of Mr. Markin in an advisory capacity in connection with its business of managing companies operating taxicabs and other motor vehicles, such employment to be for a period of two years, beginning May 1, 1931. The corporation agrees to pay Mr. Markin as compensation for such services the sum of twenty-five thousand dollars ($25,000.00) per annum during said period, payable in equal monthly installments on the last day of each month.

"It is understood, however, that Mr. Markin's services shall be merely those of an expert to be consulted in an advisory capacity, and that there is no
139 obligation on his part to devote any specified or substantial portion of his time in rendering the services aforesaid."

I offer as Government's Exhibit No. 10 copy of an agreement dated the 17th day of November, 1932, by and between the Transportation Management Corporation and Morris Markin.

I won't read that agreement. Generally it relates to an amendment of the preceding exhibit, and cuts the salary of Mr. Markin to $18,000 per year and extends the contract until December 31, 1935.

(Said document, so offered and received in evidence, was marked Government's Exhibit 10.)

I offer as Government's Exhibit No. 11 the minutes of a special meeting of the Board of Directors of Parmelee held at its office in Jersey City.

(Said document, so offered and received in evidence, was marked Government's Exhibit 11.)

I will skip the first two paragraphs of the exhibit.
140 "Upon motion duly made and seconded, the following resolutions were unanimously adopted:

"Resolved, that this corporation qualify as a foreign corporation to do business in the State of Illinois, and the president and the secretary of this corporation are authorized, directed and empowered to execute such applications, to make such payments and to take such other and further action as may be necessary or convenient for such qualification.

"Further Resolved, that this corporation consent to the dissolution of its wholly owned subsidiaries, the Parmelee Company, a Delaware corporation, and The Transportation Management Corporation, a Delaware corporation, and acquire all of the assets of said cor-

porations, subject to their liabilities and assume their contractual obligations, and the president and the secretary of this corporation be and the same hereby are authorized, directed and empowered to take all action and execute any and all consents or other papers that
141 may be necessary or convenient to fully effectuate the intent and purposes of this resolution."

It is shown by the answer to paragraph 22 of the complaint that the Parmelee Company was dissolved in May, 1934, and the business was taken over by Parmelee.

I offer as Government's Exhibit No. 12 a letter dated February 29, 1944, from C. L. Passolt of the Parmelee Company to Mr. M. H. Freimark.

Mr. LYNTON: All defendants object to this as irrelevant and immaterial.

Mr. WILLIAMS: This letter shows it is dated February 29, 1944. It shows that Mr. Markin was still being paid a salary from the Parmelee Company in 1944. The salary, of course, had to be $36,000 per year from the figures shown in that letter.

We think it is material to show that this relationship, where Mr. Markin was employed by the Parmelee Company, continued over the years down to the present time.

Mr. LYNTON: This proposed letter simply suggests that somebody deposited Mr. Markin's salary check to his account in the bank. I think the agreement indicates
142 sufficiently what his salary was, and this particular deposit has no significance at all.

Mr. WILLIAMS: Will you stipulate that Mr. Markin has continued to be an employee during this period of time by Parmelee and that his salary was $36,000 a year at this time, 1944?

Mr. LYNTON: We will stipulate that in accordance with the terms of the agreement.

Mr. WILLIAMS: I will now offer Government's Exhibit 12. I believe that covers the next exhibit.

Mr. LYNTON: It does.

Mr. WILLIAMS: He is employed down to the present time, is that correct? Is that the stipulation?

Mr. LYNTON: No, the stipulation was in relation to the particular agreement as to what somebody mentioned in that letter.

Mr. WILLIAMS: As of this time, 1944.

Mr. LYNTON: That is right.

Mr. WILLIAMS: Now, the next exhibit relates to 1945, July 7th.

Mr. LYNTON: The same stipulation, in accordance with the agreement covering that period. You have the agreements in evidence.

143 Mr. WILLIAMS: Very well. We will not offer Government's Exhibit No. 13.

I offer as Government's Exhibit No. 14 an interrogatory which is Interrogatory No. 1 submitted by the Government to Parmelee. In general, it asks about the management of National Transportation Company, Incorporated, which, according to the complaint and answer, it is a subsidiary of Parmelee, operating taxicabs in New York City.

(Said document, so offered and received in evidence, was marked Government's Exhibit 14.)

Mr. WILLIAMS: I will not read this Exhibit 14.

I offer as Government's Exhibit No. 15 the answer of Parmelee to the interrogatory, which is Government's Exhibit 14.

(Said document, so offered and received in evidence, was marked Government's Exhibit 15.)

Mr. WILLIAMS: The answer is (a)

"Parmelee System, Inc., furnished—"

I might point out that the Parmelee answer to paragraph 3-C of the complaint admits that it owns all

144 the stock of the Parmelee System, Incorporated.

"Parmelee System, Inc., furnished its services to National Transportation Co., Inc., in connection with the management and development of that company at times subsequent to January 1, 1929. Parmelee System, Inc., ceased all managerial services December 31, 1943. (b) Agreements, pertaining to such management, were entered into between Parmelee System, Inc., and National Transportation Co., Inc., as of November 1, 1931, January 1, 1934, January 1, 1935 January 1, 1936, July 1, 1938, and September 1, 1941. Yellow Taxi Corporation, New York, was also a party to the agreement entered into as of November 1, 1931."

I will skip the next answer to (b) (3). "(c) National Transportation Co., Inc., had no contract, agreement, or understanding pertaining to the management of any of its operations on August 29, 1947."

That last date is the date that the amended complaint was filed.

I offer as Government's Exhibit No. 16 the minutes of a special meeting of the board of directors of Chicago Yellow Cab Company, Incorporated, on the 16th day of April, 1929.

(Said document, so offered and received in evidence, was marked Government's Exhibit 16.)

I believe Mr. Hotchkiss will take over at this point.

The COURT: It is now four-thirty, which is the customary adjournment time. I think I asked you to be prepared to proceed at 10:15 in the morning.

Mr. WILLIAMS: Very well.

(Thereupon an adjournment was taken to 10:15 o'clock a. m. of the following day, Tuesday, May 18, 1948.)

No. 46 C 1339

UNITED STATES OF AMERICA, PLAINTIFF,

vs.

YELLOW CAB COMPANY, *et al.*, DEFENDANTS.

Before Judge LaBuy,
Tuesday, May 18, 1948,
10 o'clock a. m.

Court met pursuant to adjournment.

Present:

Mr. Hotchkiss
Mr. Williams
Mr. Lynton
Mr. Ginsberg
Mr. Fuller
Mr. Climenko

Mr. WILLIAMS: Yesterday, I offered some exhibits, 1 through 15, for the plaintiff, and a number of those exhibits were minutes of meetings of directors of various corporations which referred to and approved the execution of certain contracts. Counsel for defendants have agreed to stipulate that where those minutes show that the contracts were approved for execution, that they actually were executed.

Is that correct?

Mr. LYNTON: Substantially. I would prefer to phrase the concession in this form; that the defendants who were parties to such agreements will concede that those agreements were executed and delivered among the parties to the respective agreements.

Mr. WILLIAMS: That is sufficient. Thank you. Mr. Hotchkiss will proceed.

Mr. HOTCHKISS: I offer what has been marked for purposes of identification as Government's Exhibit 16. This consists of the minutes of a special meeting of the Board of Directors of the Chicago Yellow Cab Company held April 16, 1929, in Chicago.

(Said document, so offered and received in evidence, was marked Government's Exhibit 16.)

Mr. HOTCHKISS: For the first part of the excerpts, I simply call attention to the fact that among the directors present was Thomas B. Hogan. Proceeding on to the next paragraph:

"Mr. Charles A. McCulloch acted as Chairman of the meeting and Mr. Edward N. D'Ancona acted as Secretary thereof.

148 "The Chairman stated that the Board of Directors of Yellow Cab Company at a meeting held March 12, 1929, adopted a resolution authorizing said Yellow Cab Company to enter into an agreement with Transportation Management Corporation, * * *"

I will skip to the next paragraph.

"The Chairman then submitted to the meeting a draft of an agreement between Yellow Cab Company and Transportation Management Corporation substantially in the form submitted at said meeting of the Board of Directors of Yellow Cab Company which draft of agreement so submitted was directed to be inserted in the minute book of this corporation and immediately following the minutes of this meeting.

"The Chairman stated that said Transportation Management Corporation has requested this corporation to approve and consent to said agreement."

Thereafter follows the formal approval of the Board of Directors of Chicago Yellow to Yellow, executing the agreement.

149 I now offer Government's Exhibit 17, which is the agreement entered into on April 29, 1929 between Yellow and the Transportation Management Corporation. It is the so-called Management Contract, a copy of which was introduced as Government's Exhibit 7. It will not be necessary to read that.

(Said document, so offered and received in evidence, was marked Government's Exhibit 17.)

Mr. Hotchkiss: I offer Government's Exhibit 18, consisting of the minutes of a meeting of the Board of Directors of Yellow Cab Company, held April 17, 1930.

(Said document, so offered and received in evidence, was marked Government's Exhibit 18.)

Mr. Hotchkiss: (Reading)

"Mr. Miller submitted and read to the meeting a proposed new management contract to be entered into between this corporation, as party of the first part, acting for itself and for each subsidiary now existing or hereafter acquired or organized, of this corporation and/or of Chicago Yellow Cab Company, Inc., and The Transportation Management Corporation, as party of the second part, which proposed new management contract provides that the same shall be deemed a cancellation of the memorandum of agreement dated April 29, 1929 between the parties to said new management contract as of the date dated thereof and the said new management contract shall represent the sole agreement between the parties thereto,—"

I will not read the rest of it. But the Board of Directors then approved the new management contract.

I offer Government's Exhibit 19 which consists of the management agreement between Yellow and Transportation Management Corporation, dated May 8, 1930, which was referred to in the previous exhibit as having been approved by the Board of Directors of Yellow.

(Said document, so offered and received in evidence, was marked Government's Exhibit 19.)

Mr. Hotchkiss: I will skip the first paragraph. The second paragraph reads as follows:

"The Management Corporation has been organized for the purpose, among other things, of engaging in the business of assisting in the management of motor transportation companies. It expects to receive compensation from companies to which it renders such assistance. Parmelee Transportation Company, a Delaware corporation, owns all of the capital stock of the Management Corporation. Parmelee Transportation Company expects that it, or a sales company controlled by it will receive commissions from manufacturers of cabs and other motor vehicles, including Checker Cab Manufacturing Corporation, * * *"

The remainder of the agreement contains provisions similar to those contained in the earlier management contract.

I call attention to VI on page 51 of this book:

"VI. The Management Corporation will consult with and advise the executives officers of the Company in promoting public relations and any modification
152 of existing fare schedules; and it will consult with an advise the executive officers and directors of the company concerning its finances and financial requirements."

153 On page 52 of this same exhibit, paragraph marked XIII, it is provided that:

"As compensation for the services to be rendered by the Management Corporation to the Companies herein, the Corporation agreed to pay or cause to be paid to the Management Corporation the following sums:".

Then it recites $50,000 a year from the date of this agreement until December 31, 1930, and thereafter $75,000 a year from January 1, 1931, to December 31, 1931.

Section XV of that same management contract contains this provision:

"The Management Corporation will at all times have and maintain a sufficient number of executives, employees and experts to render the services provided for by the terms of this agreement; and Ernest H. Miller, so long as he shall be the President of the Management Corporation, except in the event of his physical incapacity, and the other employees of the Management Corporation, shall devote sufficient of their time in the City of Chicago, to render such services."

154 Note on page 53 of this exhibit as excerpted that E. H. Miller signs the agreement as President of The Transportation Managament Corporation, and A. W. Moore as President of Yellow Cab Company, attested by Benjamin Samuels, Assistant Secretary of Yellow.

By Mr. LYNTON: I wonder if we might have an understanding at this point that Ernest H. Miller had no connection whatsoever with C. C. M.

By Mr. HOTCHKISS: If you wish to state it as a fact.

By Mr. LYNTON: Will you accept that concession subject to correction?

By Mr. Hotchkiss: That he had no official title with C. C. M.?

By Mr. Lynton: That he was not employed by C. C. M.; that he was not a director of C. C. M.; that he was not an officer of C. C. M.; that he received no compensation from C. C. M.

By Mr. Hotchkiss: I am willing to accept that.

The next exhibit is Government's Exhibit No. 20, consisting of the minutes of the meeting of the Board of Directors of Yellow Cab Company held May 15, 1930.

155 Said document, so offered and received in evidence, was marked Government's Exhibit 20.)

By Mr. Hotchkiss: I call your attention particularly to the members present, or a part of the members present. Mr. S. H. Kesner, Ernest H. Miller, Thomas B. Hogan, and on page 54 of the excerpt, at the top of the page:

> "The Chairman reported that the new management contract which had been submitted to the Board of Directors at the meeting held April 17, 1930, had been duly executed under date of May 8, 1930".

And I skip to the next paragraph:

> "The President reported that of the seven hundred (700) cabs, the purchase of which had been authorized by the Board of Directors of this corporation at the meeting held January 16, 1930, twenty (20) cabs had been delivered since the last meeting of this Board of Directors, and that there were still two hundred thirty (230) cabs still to be delivered, of said seven hundred (700) cabs."

I now offer Government's Exhibit 21, consisting

156 of the management contract dated January 1, 1932, between Yellow and Transportation Management Corporation.

(Said document, so offered and received in evidence, was marked Government's Exhibit 21.)

By Mr. Hotchkiss: The terms of that agreement are in large measure the same as the terms of the preceding management agreement, so I will not read that agreement.

I call attention to the fact that on page 57 of the excerpt, dealing with this Government's Exhibit 21, it reads:

> "The undersigned, Chicago Yellow Cab Company, Inc., a corporation, organized and existing under the laws of the State of New York, hereby approves and consents to the foregoing agreement."

And signed A. W. Moore as President of Chicago Yellow Cab Company.

I offer Government's Exhibit 22, consisting of another—

By Mr. Lynton: Will Government counsel pause for a moment?

I just want to check a cross reference to this exhibit with photostats that we have.

157 By Mr. Hotchkiss: Certainly.

By Mr. Lynton: Mr. Hotchkiss, as a matter of preserving the general continuity of the exhibits which you proffer, of the minutes numbered Y-21, the minutes of the meeting of the Board of Directors of Chicago Yellow Cab Company, Incorporated, held February 18, 1932, refers to the adoption of the management contract last mentioned by you.

I should like to read, if I may, or suggest that you read a portion of the minutes which refers to this last contract.

By Mr. Hotchkiss: I am perfectly agreeable to your reading it. That is with reference to Government's Exhibit 21?

By Mr. Lynton: That is right. The Chairman of this meeting I think you have mentioned was Mr. Arthur W. Moore, and an excerpt from the minutes is as follows:

"The Chairman stated that A. W. Moore, President, and E. J. Kennedy, Assistant Secretary of Yellow Cab Company had executed and delivered on its behalf an agreement dated as of the 1st day of January 1932,

158 between said Yellow Cab Company and Transportation Management Corporation, a Delaware corporation, continuing said Transportation Management Corporation as managers of Yellow Cab Company, the term of said agreement being from the date thereof to December 31, 1932, and stated that the execution of said agreement had been approved on behalf of this Corporation by the President of this Corporation. Said agreement so executed by Yellow Cab Company and approved on behalf of this Corporation was then submitted to the meeting. Mr. Thomas B. Hogan then stated that the making of said agreement was greatly to the interest of the Yellow Company and to this Corporation, and recommended that this Board ratify the action of the President of this Corporation in approving, on behalf of this Corporation, the execution of said agreement. Mr. Hogan further said that the services of The Transportation Managament Corpora-

tion during the year 1931 resulted in Yellow Cab Company effecting savings of more than $510,000, and
159 submitted to the meeting a schedule showing in detail the various items making up those savings which schedule so submitted as the same schedule submitted to the meeting of the Board of Directors of Yellow Cab Company held this day, and which was ordered to be filed with the records of said Yellow Cab Company."

I think that is the only reference I want to read.

By Mr. Hotchkiss: Next I offer Government's Exhibit 22, consisting of another management agreement between Yellow and Transportation Management Corporation dated November 17, 1932.

(Said document, so offered and received in evidence, was marked Government's Exhibit 22.)

By Mr. Hotchkiss: The terms of it are similar to the terms of the preceding agreement except that this is for a three-year period, and as noted in Section 1, shown on page 58 of the excerpt, and Section 3 appearing on page 61 of the excerpt reads as follows:

"The Management Corporation agrees that dur-
160 ing the term of this Agreement it will employ Ernest H. Miller, and will continue to employ its two principal managers who have or who are about to execute contracts of employment with it, as executives, so long as they are able to so act, respectively, for the purpose of rendering such advice and consultation as may be reasonably necessary to assist the Management Corporation adequately to perform the management services agreed to be performed by it to the Corporation and/or the Companies hereunder. In the event that prior to the expiration of the term herein set forth, the Management Corporation shall for any reason be unable or unwilling to perform this Agreement (whether by reason of insolvency or bankruptcy, or for any other reason), or this Agreement shall for any reason be terminated, said Ernest H. Miller and said two managers (or those of them who are not then deceased or permanently disabled) shall have the right and option, if they so desire, either directly or through a corporation to be organized,
161 managed and operated by them (or by those of them who are not then deceased or permanently disabled), to assume and perform for the balance of the term hereof the management services agreed to be

performed by the Management Corporation hereunder, and shall be entitled therefor to the compensation herein named."

I will not read the remainder of that.

By Mr. Lynton: I wonder if you will read the immediately preceding paragraph.

By Mr. Hotchkiss:

"All services to be rendered by the Management Corporation under this Agreement shall be subject to the direction and control by the Board or Boards of Directors of the Corporation and/or one or more of the Companies for which such services are to be rendered, respectively."

This Agreement, as is shown in the excerpt, page 62, is signed by Thos. B. Hogan, for the Yellow Cab Company, as President, and P. S. Higgins, Vice-President of The Transportation Management Corporation, attested by R. H. Bieze, Secretary of Yellow, and attested by
162 Levin Rank, Secretary of The Transportation Management Corporation.

And the contract was approved on behalf of the Chicago Yellow Cab Company by Benjamin Samuels, President.

I offer now Government's Exhibit No. 23, consisting of the minutes of the stockholders' meeting of Chicago Yellow held on May 9, 1933, in New York City.

(Said document, so offered and received in evidence, was marked Government's Exhibit 23.)

By Mr. Hotchkiss: The paragraph at the bottom of the page reads:

"The Secretary of the meeting then reported that stockholders owning Three Hundred Nine Thousand Nine Hundred Seventy-Six (309,976) shares of stock of this corporation, out of a total of Four Hundred Thousand (400,000) shares of stock issued and outstanding entitled to vote, being the holders of more than a majority of the stock issued and outstanding entitled to vote at this meeting, were present in person
163 or represented by proxies at this meeting."

The next paragraph reads:

"The Chairman then called the attention of the stockholders particularly to the minutes of the meetings of the Board of Directors held on November 17, 1932, and on January 9, 1933, which had been presented and read to the meeting, and he presented to the

meeting a copy of the management contract executed between The Transportation Management Corporation and Yellow Cab Company, a copy of the Agreement dated November 17, 1932, between Yellow Cab Company and Ernest H. Miller, and a copy of the assignment of said Agreement by the executrix of the Estate of Ernest H. Miller, dated January 7, 1933, together with a letter dated January 17, 1933, executed by the assignee, addressed to Yellow Cab Company."

164 The stockholders then approved all of the action of the officers of their company in executing all of these agreements.

The next is Government's Exhibit 24, which is dated June 1, 1934, and consists of an assignment of the rights and obligations of the Transportation Management Corporation to Parmelee, of the agreement previously entered into between Transportation Management Corporation and Yellow.

(Said document, so offered and received in evidence, was marked Government's Exhibit 24.)

Mr. Hotchkiss: It reads:

"All rights and obligations of The Transportation Management Corporation under the agreement dated November 17, 1932, between said The Transportation Management Corporation and Yellow Cab Company, relating to the furnishing of services in connection with the management, operation and development of said Yellow Cab Company, are hereby assigned to and assumed by Parmelee Transportation Company, a Delaware corporation, as of and from June 1, 1934,

165 to the same extent and with the same effect as if said Parmelee Transportation Company were the company named as the 'Management Corporation' in said agreement."

That agreement is signed by Levin Rank, as President of The Transportation Management Corporation and by Levin Rank as President of Parmelee Transportation Company; and attested by R. J. Wyatt, as secretary of both of those companies. It was signed by T. B. Hogan, President of Yellow Cab Company, and approved by Chicago Yellow Cab Company, by its President, Benjamin Samuels, and attested by R. B. Bieze, as Secretary of Chicago Yellow Cab Company.

Now, I offer Government's Exhibit 25, on which I believe there will be objection. I will simply state at this time

that this exhibit consists of a letter signed by Mr. D. P. Green of the firm of Kirkland, Fleming, Green & Martin of Chicago, addressed to the Board of Directors of Chicago Yellow Cab Company, Inc., Chicago.

Mr. LYNTON: And you will concede, of course, that
166 Mr. Green was counsel for the defendant Chicago Yellow at that time?

Mr. HOTCHKISS: If you state that as a fact, we are willing to stipulate it, of course.

Mr. LYNTON: I will state that as a fact.

Mr. HOTCHKISS: Yes.

Mr. LYNTON: I think I have a series of objections to this proposed exhibit.

First, on behalf of Chicago Yellow, this is a privileged communication, and the defendant Chicago Yellow objects on that basis.

Second, with respect to all the other defendants, they make the specific objection at this time that this document is not binding on them. I make that particular objection because I doubt that the government suggests that the law firm of Kirkland, Fleming, Green & Martin were parties to the general conspiracy which they assert in this case and, therefore, I think that this objection has a point quite distinct from the matter which we discussed yesterday.

In addition to those two objections, all the defendants object to this document on the ground that it is irrelevant and immaterial.

The COURT: Do you wish to respond?

Mr. HOTCHKISS: Yes, your Honor.

167 The COURT: Have you completed your statement of the objections?

Mr. LYNTON: I have completed that at the moment, yes.

Mr. HOTCHKISS: Your Honor, if we assume for the purpose of argument that this document was at one time a privileged communication between attorney and client, that privilege was lost by waiver. The claim of privilege may, of course, be asserted only by the client or by the attorney on behalf of his client. The privilege, however, is a privilege which the client is free at any tme to waive, and once he has waived the privilege attaching to an alleged confidential communication between attorney and client he has lost that privilege and may not thereafter assert it. That privilege, is, of course, lost when that document is disclosed to a third person.

Now, I call the court's attention to the fact that the government is offering in evidence a photostat of the original document. This document together with the other documents which will be offered in this case and to which the claim of privilege will probably be directed
168 by the defendants was secured—this document in particular was secured—from the files of the Yellow Cab Company by representatives of the Department of Justice, the Anti-trust Division, who called upon the officers of the Yellow Cab Company and requested of them voluntary access to the files of that company for the purpose of examining those records to ascertain whether or not there appeared to be evidence indicating that there was a violation of the Sherman Anti-trust Act.

The officers of the company agreed to permit the representatives of the Anti-trust Division to make that file examination. Their agreement was made without any qualification.

These letters—and I refer to this particular letter among others—were found mixed in with the general correspondence of the company. There had apparently, quite obviously, been no attempt made on the part of the officers of the company to treat this document as a confidential communication and give it the protection from examination by third persons that such a privileged communication would require. At no time was any claim of privilege asserted by
169 the client, in this case the Chicago Yellow and Yellow. The document was surrendered freely to a third person, in this case the government attorney, and it has been in possession of the government for close to two years now, if not more than two years, and the first indication that there would be any claim of privilege raised with reference to this document was when the government received the admissions from the defendants with respect to the government's request for admissions on the authenticity of documents. At that time the defendants raised the point that they intended to claim privilege.

The government submits that with respect to this document and other documents which will be offered further on, that if there is any attorney-client privilege attached to them, that that privilege was lost by the free and voluntary disclosure of all these documents to a third party.

Mr. Lynton: I have this to say with respect to this phase of the objections offered by the defendants. I assume, of course, that Mr. Hotchkiss has presented a sup-

posed legal argument on the question of waiver of privilege. I am afraid the defendants cannot concede
170 that the circumstances of inspection were in accordance with his statement, and in that regard we simply take the position at this time that on the testimony or the documentary evidence in this case there has been no suggestion of waiver.

I would like to ask Mr. Hotchkiss, however, whether he will concede at the time request was made by the government for an inspection of records of any of these defendants that request was coupled with a suggestion of two alternatives, either that access be accorded to the government to various documents in the general files of the corporate defendants or, alternatively, that the government might proceed by way of subpoena to obtain those documents.

Mr. HOTCHKISS: I am going at this time to ask Mr. Williams to answer that question because of the fact that Mr. Williams participated in the early stage of this investigation, and I personally do not have the knowledge of the facts that a response to this question would require.

Mr. Williams, would you mind?

Mr. WILLIAMS: I do not feel we could concede that. It may be an inference that arose in the minds of the defendants.

171 The COURT: Before the court I think the question would be whether or not it was given up voluntarily or whether it was given up under threats of seizure if they did not do it. That would determine the question of whether or not it was waived.

So I think the court would have to reserve its ruling until evidence is heard on the question.

Mr. HOTCHKISS: The government is ready to produce a witness at this time on the point.

The COURT: All right.

Mr. LYNTON: Does your Honor desire to have a separate interlocutory hearing on this question of privilege, or does your Honor desire also to consider the objections on the part of all of the defendants to the irrelevancy of this document? I suggested that there was a distinction between this document and perhaps some other documents that might have been prepared by the defendants themselves.

In the case of the defendants, the complaint asserts that they were parties to an alleged conspiracy. Here we have

a letter from counsel and, as I suggest, there cannot be any assertion by the government that they were parties
172 to this conspiracy. This is a matter of legal opinions which is covered in this document. It has no connection with this case so far as the issues of sales are concerned, or so far as the issues of transfer of passengers or baggage between railroad stations, and that link cannot be supplied.

The COURT: Proceed.

Mr. LYNTON: I suggest that link cannot be supplied by the government and, therefore, it is not an appropriate document to be admitted subject to later connection.

The COURT: What is your reply to the question of the objection on the ground of irrelevancy?

Mr. HOTCHKISS: I think the answer to the claim that this document is irrelevant appears on the face of the document, from the nature of the communication, from the nature of the information that is disclosed, from the nature of the information and advice concerning which Chicago Yellow obviously asked its attorney, and the attorney on the basis of that request set forth certain facts and gave Chicago Yellow a certain, I might say, warning signal with respect to certain activities and certain actions which Chicago Yellow contemplated taking.

173 I submit that the material is highly relevant, particularly in view of what Chicago Yellow and Yellow actually did, and what they did thereafter in the face of this warning.

The COURT: I would like to read it.

On the question of relevancy, it appears to me at this time that it may be relevant in connection with all the other circumstances in the case, and I would have to overrule your objection on that point, if it is not privileged.

Mr. LYNTON: And that ruling, I take it, your Honor, refers only to the Chicago Yellow?

The COURT: For the present, yes.

Do you wish to call a witness on the question of how it was obtained?

Mr. HOTCHKISS: Yes, your Honor.

The COURT: Proceed.

Mr. LYNTON: Your Honor, while I have no objection to proceeding with the government's witness with respect to the evidence on this interlocutory question, I may suggest, even before that witness testifies, that we may be required to produce witnesses in reply, and I have not

made arrangements for that at this moment; but I
174 would be perfectly glad to proceed with the government's witness. That may solve the problem and it may not.

The Court: Yes, of course, you will have the privilege of introducing your evidence on that question.

Mr. Lynton: Fine.

The Court: And if you are not prepared now you may do so later, and the court will reserve its ruling, if that is necessary.

Mr. Hotchkiss: I was suggesting that if defense counsel wishes, we could pass this question for the moment and have a conference on the matter of producing your witnesses—

The Court: That is agreeable.

Mr. Hotchkiss: So that your witnesses would follow immediately on the heels of our witness. We would then have the opportunity of dealing with the whole matter with one series of witnesses.

Mr. Lynton: Do you suggest informing me, outside of the record, of the general offer of testimony so that I can prepare the appropriate witnesses? Is that all right?

Mr. Hotchkiss: Well—

Mr. Lynton: Mr. Williams says it is.

175 Mr. Hotchkiss: Yes, that is all right.

Mr. Lynton: Very well.

The Court: Then the court will reserve its ruling on this until that time.

Mr. Hotchkiss: Very well.

I offer Government's Exhibit 26, consisting of a letter agreement between Yellow and Parmelee, dated December 19, 1935.

(Said document, so offered and received in evidence, was marked Government's Exhibit No. 26.)

Mr. Hotchkiss: (Reading):

"This will confirm our understanding with reference to the Management Contract, dated November 17, 1932, now in existence between us, viz., that the Management Contract as now constituted is hereby extended for a period of three years and shall expire on December 31, 1938, instead of December 31, 1935, as now provided. In addition, paragraph VIII, referring to Ernest H. Miller and his associates in said Management Contract is hereby eliminated. In all other respects said Management Contract, as extended, is hereby confirmed."

176 That letter agreement is approved by T. B. Hogan, of Yellow Cab Company, Samuels on behalf of Chicago Yellow, and Levin Rank on behalf of Parmelee Transportation Company.

Now, I offer Government's Exhibit 27, which consists of the letter from C. L. Passolt, Treasurer of Parmelee, to C. P. G. Fuller under date of January 12, 1945, to which I believe this claim of attorney-client privilege will be advanced.

Mr. Lynton: Yes, that is one of the objections. It involves a different defendant, but all the objections made before apply in similar fashion to this.

The Court: That is, the same objections as to Government's Exhibit 25 for identification?

Mr. Lynton: That is correct.

In order to set the stage appropriately for the objections and their consideration, I take it that you will concede on my statement that at the date of this letter, proposed Exhibit 27, Mr. Fuller was counsel to the defendant Parmelee Transportation Corporation?

Mr. Hotchkiss: Let the record show that that is a stipulation.

177 So action on No. 27 will be reserved?

The Court: Ruling is reserved on No. 27.

Mr. Hotchkiss: I offer at this time Government's Exhibit 28, consisting of Plaintiff's interrogatory No. 19, which is directed to Parmelee.

(Said document, so offered and received in evidence, was marked Government's Exhibit 28.)

Mr. Hotchkiss: The interrogatory states:

"With respect to your denial of the allegation of paragraph 31 of the amended complaint that you assumed the management functions and contracts of the Transportation Management Corp. in 1934, state the sums paid to you for management services each year from 1934 to 1946, inclusive, by Chicago Yellow, Yellow, and by each of your cab operating subsidiaries, respectively."

I offer Government's Exhibit 29, which consists of Parmelee's answer to plaintiff's Interrogatory No. 19.

(Said document, so offered and received in evidence, was marked Government's Exhibit 29.)

178 Mr. Hotchkiss: The answer reads as follows:

"Payments were made to Parmelee Transportation Company for management services each year from 1934 to 1946, inclusive, only by Yellow Cab Company

(Chicago). Payments were made to Parmelee Transportation Company for information and statistical services by Yellow Cab Company of Pittsburgh, Pittsburgh Transportation Company and Yellow Taxi Company of Minneapolis. No managerial services were rendered to these sibsidiaries. Payments by Yellow Cab Company (Chicago) were as follows:

1934	$29,166.99
1935	50,000.00
1936	50,000.00
1937	50,000.00
1938	50,000.00
1939	36,000.00
1940	36,000.00
1941	36,000.00
1942	36,000.00
1943	36,000.00
1944	36,000.00
179 1945	36,000.00
1946	36,000.00"

I now turn to a group of documents relating to the Parmelee acquisition of cab operating companies in Pittsburgh.

I offer Government's Exhibit 30, which consists of a letter agreement from E. H. Miller, President of Parmelee, to J. A. Sisto & Co., dated July 5, 1929.

(Said document, so offered and received in evidence, was marked Government's Exhibit 30.)

Mr. Hotchkiss: The letter states:

"This will confirm our understanding with you as follows:

"To enable us to make delivery of common stock of the undersigned corporation in Pittsburgh, Pennsylvania, on July 8, 1929, to certain stockholders of Yellow Cab Company of Pittsburgh, a Pennsylvania corporation, * * *"

I will not read the rest of it, because it deals with the mechanics of setting up what I think would be called an escrow arrangement.

180 I offer Government's Exhibit 31, which consists of a letter agreement dated July 8, 1929 from E. H. Miller, President of Parmelee, to Parmelee regarding certain stockholders.

(Said document, so offered and received in evidence, was marked Government's Exhibit 31.)

Mr. Hotchkiss: I will not read this letter because it simply relates to this agreement under which certain shares of stock are in effect set up in escrow, with reference to the transaction referred to in the previous letter.

Government's Exhibit 32 is now offered, it consisting of an agreement dated August 23, 1929 between the Parmelee Transportation Company, P. L. Houston, W. A. Houston, M. M. Houston and J. H. Houston, of Pittsburgh Pennsylvania, (referred to as "Houstons" in the agreement).

(Said document, so offered and received in evidence, was marked Government's Exhibit 32.)

Mr. Hotchkiss: The agreement reads as follows:

"1. The Houstons jointly and severally make the following representations and warranties:

181 "(a) Pittsburgh Transportation Company (hereinafter called the 'Green Cab Company') is a corporation duly organized and legally existing under the laws of the State of Pennsylvania. * * *"

I will skip the rest of page 71 of the excerpted volume, and turn to the top of page 72, the first full sentence, starting with the third line:

"The Houstons and their associates own or control all of said shares of Common Stock and in excess of 824 shares of said Preferred Stock (exclusive of shares held by the Green Cab Company), and will use their best efforts to obtain, for the purposes of this agreement, all of said shares of Preferred Stock.

"(b) The Green Cab Company is engaged in the business of operating approximately 300 taxicabs in the City of Pittsburgh under the name of Green Cabs, and one bus. It has no subsidiary or affiliated companies and does its business directly. It has complied with all state and municipal statutes and ordinances in connection with its operations, and is duly au-

182 thorized to operate 300 taxicabs and said bus under the restrictions set forth in the Public Service Company Law of Pennsylvania and the orders of the Public Service Commission authorizing its operations.

"2. The Corporation—"

referring to Parmelee—

"is desirous of acquiring control, directly or indirectly, of all of the outstanding capital stock of Green Cab Company.' The Houstons propose to organize a corporation under the laws of the state of Delaware for the purpose of carrying on a trucking and other business in and about the city of Pittsburgh under the name of

Metropolitan Discributors Company (hereinafter referred to as the 'Metropolitan Company'). Accordingly, pursuant to a plan of reorganization, the Corporation proposes, as hereinafter provided, to pay to Metropolitan Company certain cash and deliver to it certain shares of its Common Stock in exchange for all of the capital stock of said Metropolitan Company; and upon the acquisi-
183 tion of such stock, to exchange all of said stock for all of the Common Stock and at least a majority of the Preferred Stock of Green Cab Company issued and outstanding, the purpose of the Houstons being that the exchange of stock shall be upon such reorganization basis as shall not result in the recognition of gain or loss to the Houstons upon the exchange of their Green Cab stock for the stock of the Metropolitan Company."

Going on into the next paragraph:

"the parties hereto agree as follows:

"I. Promptly upon the execution of this agreement, the Houstons shall organize or cause to be organized a corporation under the laws of the state of Delaware under the name of Metropolitan Distributors Company of Pittsburgh or some other name to be approved by them, with an authorized capital stock consisting of 35,000 shares of Common Stock having no par value or a par value of $1.00 per share. The Corporation agrees that it will, subject to the conditions hereafter set forth, at or prior to the closing, acquire all of
184 the authorized shares of capital stock of said Metropolitan Company in consideration of the issue to said Metropolitan Company of 10,387 shares of the Common Stock of the Corporation and the payment of the sum of $400,018.50 in cash * * *."

Then I skip over to the top of page 74.

Mr. LYNTON: All this material which you have last referred to concerns a plan of reorganization under the tax law from the standpoint of the Houstons, doesn't it?

Mr. HOTCHKISS: The material, as I read it, refers to the acquisition by the Parmelee Company of the stock of the Green Cab Company. It is done indirectly.

Mr. LYNTON: I understand that this is a purchase agreement for the stock. But the material that you have last read; the last few paragraphs, concerns the formation of a new corporation so that the Houstons can have a tax-free

reorganization. You are not suggesting that that is anything more than a tax reorganization from the standpoint of the Houstons, are you?

Mr. HOTCHKISS: I am simply reading this for what it states in the document, for such evidentiary
185 purposes as it has.

Mr. LYNTON: Will you concede at this time that J. A. Sisto & Co., which is referred to in Government's Exhibits 30 through 32, were investment bankers and were acting at this time in that capacity?

Mr. HOTCHKISS: Yes.

Mr. LYNTON: And will you also concede that at this time—

Mr. HOTCHKISS: We can stipulate, if you will. I don't think it is a matter of conceding anything.

Mr. LYNTON: When I ask for a concession I mean that. A concession is a fact for the purposes of this case. I will use the language of "stipulation," if you prefer.

Mr. HOTCHKISS: Yes.

Mr. LYTON: Will you also stipulate that there was a listing of the stock of Parmelee at this time on the New York Curb Exchange, so that problems of listing beset J. A. Sisto & Co. at this time?

Mr. HOTCHKISS: Do you state that as a fact?

Mr. LYNTON: I will state that as a fact.

Mr. HOTCHKISS: Very well. It is so stipulated.

186 Proceeding at the top of page 74:

"(d) That at the closing Messrs. P. L. Houston, M. M. Houston, J. H. Houston, and W. A. Houston shall have respectively agreed not to engage in, finance or in any way become interested in, either directly or indirectly, any business engaged in the transportation of passengers in Alleghany County, Pennsylvania for a period of ten years from the date of the closing without exception, except in so far as said parties may engage in or become interested in the business of the Corporation and/or the Green Cab Company and/or The Transportation Management Corporation, and the Corporation and/or the Green Cab Company and/or The Transportation Management Corporation, if they so desire, may be parties to said agreement which shall be in form satisfactory to counsel for the Corporation.

"(e) That at the closing Messrs. P. L. Houston and either M. M. Houston or W. A. Houston will enter into a contract of employment with the Green Cab Com-

pany in substantially the form set forth in Sched
187 ule C hereto annexed and made a part hereof.

"(f) That at or prior to the closing, the Green Cab Company shall have entered into a management contract in substantially the form set forth in Schedule D hereto annexed and made a part hereof with The Transportation Management Corporation."

I then skip over to Section VII, the upper part of page 75, which reads:

"VII. The Houstons covenant and agree that at or prior to the closing, the Green Cab Company will make no unusual commitments or contract any liabilities or purchase any cabs or equipment or any shares of its Preferred or Common Stock except in the ordinary course of business, without the consent of the Corporation evidenced by a resolution of its board of directors, and that it will conduct its business in the ordinary manner. Consent is hereby given to the purchase by Green Cab Company of approximately 150 cabs manufactured by Checker Cab Manufacturing Corpo-
ration at a price not exceeding $2,350 per cab upon
188 such terms as may be agreed upon between Green Cab Company and Checker Cab Manufacturing Corporation, including the necessary financing through outside sources of unpaid instalments, if any."

At the bottom of page 75 starts the Schedule C which is attached to the agreement. That consists of an employment contract to be entered into between the defendant Pittsburgh Transportation Company and P. L. Houston and M. M. Houston. I will not read the terms of that.
189 Schedule D, consisting of a management contract or proposed management contract to be executed between Pittsburgh Transportation Company and Transportation Management Corporation. The terms of this management contract are similar to the terms of those management contracts which are already in evidence. For that reason, I will not read it except to note that on page 79, Section 13 provides that.

"As compensation for the services to be rendered by the Management Corporation to the Companies herein, the Corporation agrees to cause to be paid the Management Corporation the sum of Ten Thousand Dollars ($10,000.00) per annum, payable in equal monthly instalments beginning from the date of this Agreement."

Will you stipulate that this management contract and the employment contract were actually entered into?

By Mr. Lyxros: I will stipulate on behalf of the d
ants who are parties to this Agreement that the
ment was executed and delivered among the parties
Agreement.

By Mr. Hotchkiss: Next, Government's E
190 No. 33, consisting of the minutes of the Dire
meeting of Checker Cab Manufacturing Co
dated October 7, 1929.

(Said document, so offered and received in evidenc
marked Government's Exhibit 33.)

By Mr. Hotchkiss: Present at this meeting, among
Directors, was Morris Markin.

"Mr. Markin, President of the Corporation,
the meeting to order and acted as Chairman ther

"Mr. Haveron, Secretary of the Corporation,
as Secretary of the meeting and kept the minutes
of.

"The Secretary then presented to the meeti
printed lease of motor vehicles from this Corpo
as lessor, to Yellow Cab Company of Pittsburgh,
and the agreement for assignment of same t
Union Trust Company of Pittsburgh, Trustee,
September 16, 1929, and reported that the sam
been executed and acknowledged on behalf of thi
poration by Ralph E. Oakland, Vice-President."

Then the Board approved the lease and app
191 similar lease of 150 cabs for the Pittsburgh T
portation Company.

Next, I offer Government's Exhibit 34, consisting
bill of sale by Robert J. Hasley, doing business as th
Cab Company, to Yellow Cab Company of Pitts
dated June 27, 1930.

(Said document, so offered and received in evidenc
marked Government's Exhibit 34.)

By Mr. Hotchkiss: It is a bill of sale covering e
taxicabs and other property to the Yellow Cab Compa
Pittsburgh.

I offer next Government's Exhibit No. 35, which
sists of Plaintiff's Interrogatory No. 16.

(Said document, so offered and received in evidenc
marked Government's Exhibit 35.)

By Mr. Hotchkiss: It is addressed to the defe
Parmelee, and reads:

"State, with respect to your denial of part
allegations of Paragraph 25 of the Amended
plaint:

"(a) The number of shares of stock of Red Cab Company purchased by Parmelee in June, 1930;

192 "(b) The names of all companies, other than those in which you owned stock, that operated cabs in Pittsburgh in June, 1930;

"(c) The names of each corporation which has been merged in, or whose assets have been acquired by, Yellow Cab Company of Pittsburgh, and by Pittsburgh Transportation Co., respectively, since January 1, 1929;

"(d) The date of each merger referred to in subparagraph (c) of this paragraph;

"(e) The date of each acquisition of assets, referred to in subparagraph (c) of this paragraph."

I offer Government's Exhibit 36, consisting of Parmelee's answer to plaintiff's Interrogatory No. 16.

(Said document, so offered and received in evidence, was marked Government's Exhibit 36.)

By Mr. Hotchkiss: The answer reads:

"(a) Red Cab Company was not a corporation but Parmelee Transportation Company purchased through Transportation Management Corporation the partnership of Robert J. Hasley and Nettie D. Lewis, trading as the Red Cab Company and registered under the fictitious name act at the Prothonotary office of Allegheny County, for the sum of $47,515.58.

193 "Parmelee Transportation Company added to its investment in the Yellow Cab Company of Pittsburgh and Pittsburgh Transportation Company the cost of acquiring the Red Cab Company, adding $24,257.79 to its investment in each of these companies.

"(b) Companies, other than those in which Parmelee Transportation Company owned stock, and individuals that held certificates of public convenience and operated cabs in Pittsburgh in June 1930, were as follows:"

Then follows a list of twelve names

"Greenway, Geo. Co.
Glenn, Cobert L.
Red Cab Company
Lai, Geo. J.
Garavini, Andy

194 Gerber, Robt.
Kennedy, E. H. (McKeesrocks Taxi)
Airlines Transportation Co., formerly trading under the name of Lewis W. Rogers
Dawson, J. J.
Riemer, J. L.
Tube City Taxi
Erdel, Henry

"(c) and (d), Pittsburgh Transportation Company was merged into Yellow Cab Company of Pittsburgh, December 31, 1946 pursuant to order of the Public Utility Commission of Pennsylvania.

"(e) None."

Government's Exhibit 37, which I offer at this time, consists of plaintiff's Interrogatory No. 8.

(Said document, so offered and received in evidence, was marked Government's Exhibit 37.)

By Mr Hotchkiss:

"To Parmelee. With respect to your denial of the allegations of paragraph 16 of the amended complaint, state the total number of cabs licensed for
195 operation in the City of Pittsburgh by your subsidiaries on about August 29, 1947."

I offer Government's Exhibit No. 38, consisting of Parmelee's answer to plaintiff's Interrogatory No. 8.

(Said document, so offered and received in evidence, was marked Government's Exhibit 38.)

By Mr. Hotchkiss: The answer is:

"The total number of cabs licensed for operation on August 29, 1947 in the City of Pittsburgh by the Yellow Cab Company of Pittsburgh, Parmelee Transportation Company's sole subsidiary operating cabs in that city, was 460."

I offer Government's Exhibit 39, which consists of a letter dated November 13, 1942, from R. J. Wyatt to M. Markin, with Attachments Summarizing Parmelee Status of Investment in Yellow of Pittsburgh. I will not read this.

By Mr. Lynton: I would like to offer an objection to this document. There are two objections.

The first is that it is irrelevant and immaterial. It is a document which relates to a situation in 1942,
196 which I think has no relevance to the acquisition of the earlier days, and in addition to that, the finan-

cial data concerned with this problem seems to me to have no relevance to the suit.

The second objection is, it is a letter written by a man whose name is R. J Wyatt, who had no connection with the defendant Parmelee in the operations with which we are concerned. There may be a real problem of competency there with respect to his ability to represent any of these companies.

I might say we have not conceded anything in respect to this in our requests other than this letter was prepared by the person mentioned and sent to the addressee.

By Mr. Hotchkiss: As a matter of fact, I might go a step farther and say through oversight I believe this letter was not sent to any of the defendants in connection with the Government's earlier request for admissions on authenticity.

By Mr. Lynton: I see.

By Mr. Hotchkiss: Subsequently the Government provided you with a copy of the letter and advised that it would be offered, and as I understood, there would
197 not be objection, that the same admission would be made with respect to this as was made with respect to the other documents.

By Mr. Lynton: Then we will stipulate for your purposes that that letter was prepared and sent by Mr. Wyatt, and that it was received by this addressee, Mr. Markin.

By Mr. Hotchkiss: Well, was Mr. R. J. Wyatt, at the time he wrote this letter, connected with, or affiliated with any of the defendant companies?

By Mr. Lynton: How is this letter signed?

By Mr. Hotchkiss: It is a letter signed, "R. J. Wyatt" from 1790 Broadway, New York, reading:

"Mr. M. Markin,
1401 West Jackson Boulevard,
Chicago, Illinois,

Dear Mr. Markin:

"Answering yours of October 19th, I am enclosing statement concerning the Pittsburgh Companies which we have reconstructed and which you desire for your file."

By Mr. Lynton: That is on the personal letterhead of R. J. Wyatt, is that not accurate?

198 By Mr. Hotchkiss: It apparently is on such a letterhead, but it shows on its face that the material was prepared at the instruction and request of Mr. Markin with respect to the transaction involving the acquisition of these Pittsburgh companies.

By Mr. Lynton: Mr. Hotchkiss, may I ask—I do not want to get into a long controversy about something that does not seem to me to be very material.

I think we might possibly obviate this thing between ourselves.

You will observe in this letter Mr. Wyatt had no connection with any of these defendants during the period under consideration.

By Mr. Hotchkiss: Will you state what period you are referring to?

By Mr. Lynton: Yes, the period of the acquisition of the Pittsburgh Company by Parmelee. It says right on the face of this letter that we have reconstructed something.

Now, we are interested in something here which is simply the purchase of the stock. You have got ample admissions of that fact. What Mr. Wyatt reconstructs, seems to me has no relevancy to this action in any way, and I object on those grounds.

199 By Mr. Hotchkiss: I think the material collected by Mr. Wyatt under instructions from the defendant, Markin, and prepared for the purpose of showing what the overall financial transactions were relating to the acquisition of the Pittsburgh companies, and the manner in which the financing was handled, are material and relevant to the issues of this case.

I offer the exhibit.

The Court: Well, is it a fact that Mr. Wyatt had no connection with the company?

Mr. Lynton: He had no connection with the acquisition of the Pittsburgh company.

The Court: At the time of the writing of the letter.

Mr. Lynton: He did have connection with Parmelee at that time.

The Court: He did.

Mr. Lynton: Yes.

Mr. Hotchkiss: What was his connection with Parmelee at that time?

Mr. Lynton: He was Secretary and Treasurer.

Mr. Hotchkiss: Secretary and Treasurer of Parmelee on November 13th, 1942, at the time he wrote this letter.

Mr. Lynton: That is right. You see, your Honor,
200 my point is twofold, that this is, on its face, a reconstruction of events, therefore a matter of interpretation rather than anything else.

Secondly, that this has absolutely nothing to do with this case because it concerns the financial course used for purposes in 1932 which have no relationship whatsoever to the acquisition of the stock of the Pittsburgh company in and about 1929.

Mr. Hotchkiss: The letter shows further, in addition to what I have already indicated, it shows a certain measure of control by the defendant Markin over the Parmelee Transportation Company.

Mr. Lynton: Oh, not at all.

Mr. Hotchkiss: Mr. Markin is President of the Checker Cab Manufacturing Company, and in his other capacities with the various companies that are involved here, could request for such purposes as he deemed worthy, to have the Secretary and Treasurer of the Parmelee Company pull together information which Mr. Markin needed or desired.

The Court: Well, the nature of the case is such it is pretty hard for the Court to rule at this time on it. I assume that the Government can connect it up and
201 make it material. I think the proper ruling would be to admit it subject to your objection, and it will be excluded later if it is not connected up and made relevant.

(Said document, so offered and received in evidence, was marked Government's Exhibit 39.)

Mr. Lynton: If your Honor please, Mr. Hotchkiss has made a remark which I am glad he has brought up, because I would like it to be clear from this point forward, that Mr. Markin acted as management consultant to Parmelee. The documents which Mr. Hotchkiss has offered show that as a fact, and it is the fact. And I should like a clear demarcation to be made between the situation where Mr. Markin acts in that capacity, and the fact which is not related, that Mr. Markin is the President of the Checker Cab Manufacturing Corporation.

Putting it differently, if Mr. Markin acts in any capacity for Parmelee, he does so in his capacity as management adviser, and I suggest that no remark be made unless proof

can be produced that when Mr. Markin does any such thing, he acts on behalf of the defendant, C. C. M.

Mr. HOTCHKISS: I point out in response to those
202 comments that the Government has here charged that the defendants have engaged in a combination and conspiracy, and many of the relations which arise during the course of the history of this conspiracy have been developed and created as the result of a conspiracy. I think that the evidence will show as it is developed that when Mr. Markin writes a letter, it is sometimes difficult to know whether he writes it as an adviser to Parmelee or as President of the Checker Cab Manufacturing company, or as an investor in Cab Sales or in some other capacity, but it is clear, and I think the evidence will make it clear, that Mr. Markin does act in furtherance of the conspiracy which is alleged.

Next we come to a group of documents dealing, in general, with Parmelee's acquisition of Yellow, Minneapolis, and Deluxe of Chicago, and the merger of Deluxe with Chicago Cab Company and of latter with Checker, starting toward the top of page 84.

I offer in evidence Government's Exhibit No. 40, which consists of minutes of a Directors' meeting of Parmelee held October 31, 1929, in New York City.

203 Mr. LYNTON: Before you offer that document, may I ask you for some stipulations at this time with reference to the materiality of this document?

First, will you stipulate that Deluxe was substantially owned by Mr. Markin in 1927?

Mr. HOTCHKISS: You say in 1927?

Mr. LYNTON: That is right.

Mr. HOTCHKISS: If you so state, I will stipulate.

Mr. LYNTON: I so state.

Will you also stipulate that prior to January 1, 1929, C. C. M. cabs were sold to Deluxe?

Mr. HOTCHKISS: If you state that as a fact, I will so stipulate.

Mr. LYNTON: I state it as a fact.

I object to that document on the ground it is irrelevant and immaterial, and refers solely to local problems.

I understood full well what the Government's contention is with respect to some of these local taxicab companies, namely, that they were acquired with some ulterior purpose or alleged conspiracy to obtain a market for C. C. M.'s cabs, but on the face of these stipulations which

you have just made, this could not have been the
204 fact, because Mr. Markin, being the owner of substantially all of the stock of Deluxe two years before the date of the alleged conspiracy, and C. C. M. having sold cabs to Deluxe at least two years before the date of the conspiracy, the acquisition of Deluxe cannot possibly change the situation.

I therefore object to this document.

The Court: It is received conditionally, if the Government will connect it up and make it material.

(Said document, so offered and received in evidence, was marked Government's Exhibit 40.)

Mr. Hotchkiss: I read:

"Mr. Miller acted as Chairman and Mr. Haveron as Secretary of the meeting.

"The Chairman reported that the purchase of the stock of Pittsburgh Transportation Company had been concluded, and that the Company, after paying the cash involved in that purchase, had over $300,000 in cash; that the earned surplus of the Company for the period from April 12 to September 30, 1929, after debenture interest and preferred stock dividends,
205 was in excess of $375,000, and that the two Pittsburgh companies were beginning to show improved earnings.

* * *

"The Chairman reported that he had been negotiating for the acquisition by this Company of the stock of De Luxe Motor Cab Company of Chicago. This company has licenses for the operation of about 360 cabs in the city of Chicago, and since the passage of an ordinance limiting the number of cabs in Chicago, he considered that these licenses had a substantial value, and that licenses at $1,000 per cab should be considered cheap; that the company did not operate the cabs itself, but that they were operated under a cooperative system by drivers, under an arrangement with the company whereby the company made a substantial profit on the cost price of the cabs, and rendered service to the drivers in garaging, repairing, sale of equipment and the like. He stated further that there was only three large companies in Chicago,
206 and that by acquiring the DeLuxe Company this Company would in effect control the operation of two out of three large operating companies; that the

DeLuxe Company had not been in a position to obtain and operate Checker cabs when they were first used in Chicago, but that it was now in a position to do so, and that although it had some losses rather than profits for some time past, he was of the very definite opinion that the company's business had now turned the corner and was making profits; that with the new ordinance limiting the number of cabs in Chicago, the acquisition was a highly desirable one for the Company to make. He stated that the DeLuxe Company was now owned by Mr. Morris Markin who had indicated his willingness to sell it to this Company for the sum of $100,000 in cash and 16,000 shares of common stock of this Company."

I skip the next paragraph. The following one reads:

"The Chairman further stated that he estimated that the earnings under the conditions which would exist
207 after the purchase by this Company should amount to about $100,000 a year; and that in his opinion manufacturing companies and companies not now operating in Chicago would be glad to pay more for the DeLuxe Motor Cab Company than was proposed under his negotiations with Mr. Markin.

"After discussion, and on motion duly made and seconded, the following resolutions were unanimously adopted:

"RESOLVED, that the President of the Corporation be and he hereby is authorized"—

There after is the formal authorization.

I now offer Government's Exhibit No. 41, consisting of the minutes of a Directors' meeting of Parmelee, dated January 30, 1930, held at 68 Wall Street, New York.

Mr. LYNTON: I, of course, have the same objection to the offer of this document. And may I suggest that the Court permit my standing objection to these documents which are related to the purchase of DeLuxe.

The COURT: Yes, the record may so show.

Mr. LYNTON: So that I won't repeat it.

208 The COURT: It will avoid repetition.

Mr. LYNTON: May I ask also two other stipulations?

I think it will eliminate my jumping up with the next few documents.

Will you stipulate that after the transfer of ownership from Mr. Markin to a subsidiary of Parmelee, of DeLuxe, only two taxicabs were sold by C. C. M. to DeLuxe?

Mr. HOTCHKISS: Through how long a period?

Mr. LYNTON: Forever after.

Mr. HOTCHKISS: I think I would prefer to reserve stipulating on that until after the reading of the document.

Mr. LYNTON: All right. The only reason I ask you for it is because it bears on the question of materiality.

Let me also ask you for another stipulation. You may desire to reserve your answer, but my basis is the same.

Later, when you refer to Chicago Cab as a development of this DeLuxe situation, I should like a stipulation that no cabs were ever sold by C. C. M. to Chicago Cab.

Do you want to reserve that?

Mr. HOTCHKISS: Yes, I will reserve that.

209 (Said document, so offered and received in evidence, was marked Government's Exhibit 41.)

Mr. HOTCHKISS: Government's Exhibit No. 41 has already been referred to.

"Mr. Miller, the President of the Corporation, called the meeting to order and acted as Chairman thereof. Mr. Haveron, Secretary of the Corporation, acted as Secretary of the meeting and kept the minutes thereof.

* * *

"The Chairman then stated the circumstances had arisen which necessitated a revision of the contemplated acquisition by this Corporation of all of the capital stock of DeLuxe Motor Cab Co., an Illinois corporation, determined upon by this Board of Directors at their special meeting, held on October 31, 192. He further stated that the consummation of this purchase as resolved upon by the Board of Directors had been delayed upon the advice of counsel, inasmuch as there were certain points in connection with DeLuxe
210 Motor Cab Co. and with its operations under the laws of Illinois which should be adjusted before this Corporation should make the purchase. A general discussion of the method of revising the transaction then ensued."

Then there is a discussion on that, holding the earlier plant in abeyance.

The Board of Directors approved the acquisition of the cab operations, of the Red Cab Company in Pittsburgh.

Then proceeding, on page 87:

"The Chairman then stated that the management of DeLuxe Motor Cab Co. was, on December 15, 1929, taken over by The Transportation Management Cor-

poration, a subsidiary of this Corporation. He then presented to the meeting a form of contract to be entered into by General Transportation Corporation, this Corporation, Morris Markin and Paul C. L'Amoreaux, relating to the acquisition of all of the capital stock of DeLuxe Motor Cab Co., and the sale by this Corporation to Morris Markin and Paul C. L'Amoreaux of 16,000 shares without par value of
211 its common stock at $18 per share pursuant to resolutions heretofore adopted by this Board of Directors. The Chairman then stated that in view of certain legal complications which had arisen on connection with the acquisition of the capital stock of DeLuxe Motor Cab Co., the plan of acquisition determined upon by the Board of Directors of this Corporation on October 31, 1929, had been revised and that the new plan of acquisition was set forth in said form of agreement. He further stated that the vendors of said capital stock of DeLuxe Motor Cab Co. would be under obligation under certain conditions to repurchase said capital stock at a price equal to the present asset value of DeLuxe Motor Cab Co. but in such event The Transportation Management Corporation, a subsidiary of this Corporation, would continue to maintain its management arrangements with DeLuxe Motor Cab Co. under which The Transportation Management Corporation now receives an amount equal to 75% of the net profits of DeLuxe Motor
212 Cab Co. as a management fee.

"Mr. Albert F. Jaekel, counsel for this Corporation, being present at the meeting, then outlined the legal aspects of the situation to the Board of Directors and stated that in his opinion every precaution had been taken to provide against the possibility of General Transportation Corporation finding it advisable to dispose of the stock of DeLuxe Motor Cab Co. at a future date."

I refer then to the top of page 88. The Board of Directors approved the form of agreement entered into by these corporations, Morris Markin, Paul C. L'Amoreaux, and General Transportation Corporation.

Next, I offer Government's Exhibit 42, consisting of an agreement between Parmelee, Markin, L'Amoreaux and GTC, regarding DeLuxe with Schedules A and B attached, dated February 5, 1930.

(Said document, so offered and received in evidence, was marked Government's Exhibit 42.)

Mr. Hotchkiss:

213 "Agreement dated the fifth day of February, 1930, by and between Parmelee Transportation Company, a corporation of, the State of Delaware party of the first part (hereinafter called the 'Corporation'), Morris Markin and Paul S. L'Amoreaux, parties of the second part (hereinafter called the 'Sellers') and General Transportation Corporation, a corporation of the State of Delaware, party of the third part (hereinafter called 'General'),

Witnesseth:

1. The sellers jointly and severally make the following representations, warranties and agreements:

(a) DeLuxe Motor Cab Co. (hereinafter called 'DeLuxe'), is a corporation duly organized and legally existing under the laws of the State of Illinois having an authorized capital stock of 3,500 shares"—

I skip now to the last sentence in No. 1.

"The Sellers own or control all of said shares of stock except 45 shares, and will obtain, for the purposes of this agreement, all of said 45 shares of stock.

214 (b) DeLuxe is engaged in the business of operating at present approximately 308 taxicabs in the City of Chicago under the name of 'DeLuxe Cabs', all of which cabs are operated under contracts substantially in the form of the 'Drivers' Contract' attached hereto and made a part hereof as Schedule A. DeLuxe has been licensed and/or has good and valid Licenses to operate 400 taxicabs in the City of Chicago for the year 1930. DeLuxe owns all of the cabs actually operated subject only to chattel mortgages securing the purchase price thereof and to the terms and conditions of said 'Driver's Contracts', and has complied with all state and municipal statutes and ordinances relating to its operations and maintenance of its licensee to operate 400 taxicabs. DeLuxe conducts its business directly and has no subsidiary or affiliated companies.

• • • DeLuxe has no long term or unusual contracts of any nature except a management contract with the Transportation Management Corporation, a Dela-

215 ware corporation, and a contract with Checker Cab Manufacturing Corporation, a New Jersey corporation, with which the parties hereto are familiar, * * *

"2. General is desirous of acquiring all of the outstanding capital stock of DeLuxe and the Corporation is desirous of finding a purchaser for 16,000 shares without par value of its own common stock at the price of $18 per share."

The proceeding on a little farther:

"1. General agrees to purchase from the Sellers, subject to the condition hereinafter set forth, and the Sellers agree to sell and deliver to General all of the outstanding capital stock of DeLuxe in consideration of the payment to the Sellers, or upon their order, of the sum of $388,000 in New York funds."

I now skip to the next paragraph, II:

"II. The Sellers agree to purchase from the Corporation at the closing above provided for, simultaneously with the delivery to General of the shares of stock in DeLuxe and the payment by General for
216 such shares, as above provided, and the Corporation agrees to sell to the Sellers, subject to the conditions hereinafter set forth, 16,000 shares without par value of its common stock at the price of $18 per share."

And then skipping next to Schedule A of Driver's Contract. May I refer to the top of page 90 on that driver's contract, which is a form of contract between DeLuxe and the drivers, providing that the company employs the driver on these terms and conditions:

"(A) The company covenants and agrees:

"1. To allot to the driver that certain taxicab manufactured by the Checker Cab Manufacturing Corporation,"—

Then describing it in detail; I will not read the rest of the agreement.

Next, I offer Government's Exhibit 43, plaintiff's interrogatory No. 17.

(Said document so offered and received in evidence, was marked Government's Exhibit 43.)

Mr. Hotchkiss: It is directed to Parmelee, ask—

217 "With respect to your denial of certain of the allegations in paragraphs 27 and 28 of the amended complaint, state:

"(a) The consideration paid by General Transportation Corporation in February 1930 for the stock of DeLuxe and to whom it was paid;

"(b) The amount of stock of Parmelee acquired by Markin in 1930 and its date of acquisition;

"(c) The amount of stock of Parmelee acquired by L'Amoreaux in 1930 and its date of acquisition."

Government's Exhibit 44 consists of Parmelee's answer to plaintiff's Interrogatory No. 17.

(Said document, so offered and received in evidence, was marked Government's Exhibit 44.)

"(a) DeLuxe Motor Cab Company was purchased for 16,000 shares of stock of Parmelee Transportation Company valued at $18.00 per share plus $79,555.42 cash and the assumption of liabilities of DeLuxe in
218 the amount of $ 0,444.58 (which were never paid). $79,555.42 cash was paid to Mr. Markin.

"(b) Mr. Markin acquired 8,000 shares of stock of Parmelee Transportation Company from the company in February 11, 1930.

"(c) Mr. L'Amoreaux acquired 8,000 shares of stock of Parmelee Transportation Company from the company on February 11, 1930."

I now offer Government's Exhibit 45, consisting of the minutes of Directors' meeting of Parmelee, dated May 28, 1930.

(Said document, so offered and received in evidence, was marked Government's Exhibit 45.)

"The Chairman then stated that he was conducting negotiations with Michael M. Sokoll of Chicago for the formation of a taxicab unit in Chicago around the DeLuxe Motor Cab Co. The plan provided for the transfer of the stock owned by this Corporation in General Transportation Corporation which owns all except 10½ shares, of the capital stock of DeLuxe
219 Motor Cab Co. to Voting Trustees, and the delivery of 50% of the voting trust certificates representing said General Transportation Corporation stock to Michael M. Sokoll, in consideration of the delivery by Michael M. Sokoll to DeLuxe Motor Cab Co. of complete and valid licenses to operate at least 350 taxicabs in the City of Chicago, Illinois, the conveyance to DeLuxe Motor Cab Co. of the cab equipment of several independent operators in Chicago, and the execution by operators in Chicago of employment contracts with

DeLuxe Motor Cab Co. The chairman further stated that he felt this plan would permit DuLuxe Motor Cab Co. to commence to make earnings and that he felt that under the present methods of operation DeLuxe Motor Cab Co. would not be in a position to show a profit for a considerable length of time. He further stated that he believed that the combining of these independent operators in Chicago with DeLuxe Motor Cab Co. into one operation would be a profitable one, and in addition would prevent some outside
220 company from entering the taxicab operating field in Chicago in competition with the Yellow Cab Company, and thereby reducing the value of this Corporation's investment in Chicago Yellow Cab Company, Inc. He pointed out to the Board of Directors that, while The Transportation Management Corporation had a management contract which insured protection for the investment of this Corporation in DeLuxe Motor Cab Co., in the event that the title of this Corporation to the common stock of DeLuxe Motor Cab Co. was attacked, this management contract would have to be terminated. He presented to the meeting a form of contract to be entered into between Paul C. L'Amoreaux, as nominee of this Corporation and of General Transportation Corporation, and Michael M. Sokoll to consummate the proposed plan."

221 And then the directors approved the combination and agreement.

Next is Government's Exhibit 46, consisting of the minutes of the directors' meeting of Parmelee, dated June 10, 1930.

(Said document, so offered and received in evidence, was marked Government's Exhibit 46.)

"Mr. Miller, President of the Corporation, called the meeting to order* * *"

I skip down to the next paragraph.

"The Chairman then reported upon the operations controlled by this Corporation in Pittsburgh and stated that additional cabs had been purchased and that the Yellow Cab Company of Pittsburgh and Pittsburgh Transportation Company were maintaining a seventy per cent operation."

I will skip on to the next.

Mr. LYNTON: Will you read the next sentence?

Mr. HOTCHKISS: (Reading)

"He further stated that he had paid $20,000 to counsel for services rendered in connection with the recent taxicab strike."

The Board then approved those actions.

222 "The Chairman then stated that the proposed formation of a taxicab unit in Chicago around DeLuxe Motor Cab Co. with Michael M. Sokoll had presented several important legal questions which had arisen in connection with the negotiations with Messrs. Morris Markin and Paul C. L'Amoreaux, and, in view of his contemplated absence in Europe, he suggested that the Board authorize the consummation of the transaction in his absence."

And the Board then so approved such action.

Next I offer Government's Exhibit 47, consisting of the minutes of the Directors Meeting of Checker Cab Manufacturing, dated June 24, 1930.

(Said document, so offered and received in evidence, was marked Government's Exhibit 47.)

Mr. Hotchkiss: Mr. Morris Markin is among those present.

"Mr. Markin, President of the Corporation, called the meeting to order and acted as Chairman thereof."

223 "The Chairman then stated that although this Corporation had a contract with DeLuxe Motor Cab Co., an Illinois corporation, whereunder DeLuxe Motor Cab Co. had agreed to purchase all of its taxicab requirements of this Corporation, he deemed it advisable to cancel said contract inasmuch as to do so would permit the reorganization of DeLuxe Motor Cab Co. in Chicago to place it on a profitable basis. He further pointed out to the Board of Directors that Parmelee Transportation Company had an interest in DeLuxe Motor Cab Co. and that it was advantageous to the Parmelee Transportation Company that DeLuxe Motor Cab Co. should be re-organized."

This recommendation was thereupon approved by the Board.

The Court: The court will recess at this point.

(Thereupon the further trial of the above-entitled case was recessed until 2 o'clock p. m. of the same day, Tuesday, May 18, 1948.)

224 No. 46 C 1339

UNITED STATES OF AMERICA, PLAINTIFF,

vs.

YELLOW CAB COMPANY, *et al.*, DEFENDANTS.

Before Judge LaBuy,

Tuesday, May 18, 1948,
2 o'clock p. m.

Court met pursuant to recess.

Present: Mr. Hotchkiss
Mr. Williams
Mr. Lynton
Mr. Ginsberg
Mr. Fuller
Mr. Climenko

The CLERK: Case on trial.

The COURT: Proceed, please.

Mr. HOTCHKISS: I now offer Government's Exhibit No. 48, which consists of the minutes of the directors' meeting of Parmelee held January 12, 1931.

(Said document, so offered and received in evidence, was marked Government's Exhibit 48.)

225 Mr. HOTCHKISS: I turn to the top of page 96 of the excerpts and read:

"Mr. L'Amoreaux then addressed the meeting and stated that one of the conditions to the consummation of the contract entered into by Michael M. Sokoll and Paul C. L'Amoreaux, acting on behalf of this Corporation and General Transportation Corporation, in connection with the reorganization of DeLuxe Motor Cab Co., was that Mr. Sokoll would obtain 350 additional licenses to operate taxicabs in the City of Chicago, Illinois, and that due to existing conditions and other circumstances it had been found necessary to operate more than between 200 and 250 taxicabs, and that he deemed it advisable to close the transaction without insisting upon the performance of this particular condition."

Then the directors approved that recommendation. Then proceeding to the next paragraph:

226 "The Chairman then stated that Mr. Paul C. L'Amoreaux, acting on behalf of this Corporation, had purchased at auction from the receiver all of the

assets of the Yellow Cab Company of Minneapolis, under an order from the Court having jurisdiction, 120 cabs with licenses, concessions and approximately $20,000 of equipment for $16,305, and that title was taken to this property by means of a common law trust under the name of Minneapolis Cab & Baggage Company. He further stated that it was probable that a new ordinance limiting the number of licenses in Minneapolis would soon be passed and that he expected, in such an event, this operation could then be disposed of at a profit."

Then I am starting at the bottom of page 96 of the excerpts:

"The Chairman then stated that it was proposed to lease on the sixth floor of 1775 Broadway, Borough of Manhattan, additional space to take care of the operations of The Transportation Management Corporation and its affiliated companies, and that he had arranged to have The Transportation Management Corporation lease said premises for a term of five years."

227

That is as far as I will read there. I will omit the next section.

I now offer Government's Exhibit 49 on page 98 of the excerpts. It consists of a letter dated April 1, 1932 from Levin Rank, to Chicago Cab Company with a letter having designations indicating that the same letter was sent to other companies.

Mr. LYNTON: I take it that the proposed Exhibit 49 is a foundation for the reception of 50, 51 and 52?

Mr. HOTCHKISS: That is correct.

Mr. LYNTON: I object to the proposed Exhibit 49, and I will object to 50, 51 and 52 upon the ground that 50, 51 and 52 are incompetent, that they are hearsay. There is no authentication of them, and they are immaterial, and since 49 is offered merely as a foundation, I object to it as being inadmissible.

Mr. HOTCHKISS: I offer 49 for the further reason that it shows the type of control exercised by Transportation Management Corporation, in addition to its being a foundation for the further letters.

228

Mr. LYNTON: I do not understand that remark, but I would like to have clear whether you are offering 49 independently or merely as a foundation.

Mr. HOTCHKISS: For the two reasons I have indicated, because 49 states:

"We are desirous of checking our records in connection with your company and ask that you kindly furnish us the following information."

The same information went to the other companies.

Mr. LYNTON: Before you read that, the objections I have made thus far of course refer to the use of 49 as a foundation.

In addition to that, I suggest 49 is inadmissible independently. I object to it as being irrelevant. It has no relation at all with the charge in this case.

The COURT: Well, again, unless it is a link in the chain of evidence, it should not be admitted, and that will not be revealed to the court until later. I presume the government has evidence that will connect it, so I feel con-
229 strained to allow it to go in subject to the objection, and to rule it out later if it has not been connected up directly.

(Said document, so offered and received in evidence, was marked Government's Exhibit 49.)

Mr. HOTCHKISS: Government's Exhibit No. 50 is a letter dated April 9, 1932 from H. J. Masson, Assistant Treasurer of the Chicago Cab Company, to Transportation Management Corporation, attention of Mr. Levin Rank, the Vice President of that company.

Mr. LYNTON: I object to this as incompetent. It is hearsay. It is not prepared by any defendant in this suit.

The COURT: Which one is this now?

Mr. LYNTON: 50. It is a letter purportedly prepared by H. J. Masson of the Chicago Cab Company. The Chicago Cab Company is not a defendant in this suit, and I object to it as incompetent, and it is hearsay.

Mr. HOTCHKISS: Your Honor, the Chicago Cab—the allegations of the complaint refer to the Chicago Cab Company as being one of the companies involved in the conspiracy. The preceding exhibit shows on its face
230 that it is a letter from Levin Rank, who is Vice President of the Transportation Management Company, the Management Corporation to this company, requesting certain detailed information regarding the corporate status of the Chicago Cab Company.

The COURT: Well, the court will receive it subject to counsel's right to move to have it stricken in case it is not connected up.

Mr. LYNTON: I should like to make it clear, your Honor, that my objection goes beyond the question of materiality.

There is no authentication of this document, and I think it is incompetent. The only concession we made is that that letter has been received. We might receive any kind of a communication from anybody in the world. That does not make it binding upon any of us. It is hearsay.

Mr. Hotchkiss: I think, your Honor, that the juxtaposition of these letters shows very clearly that this letter, Exhibit 50, was received by Transportation Management Corporation, a wholly-owned subsidiary of Parmelee, in response to a specific request directed by an officer of that company to this Chicago Cab Company, and it was apparently, on the face of it, done in the course
231 of business.

The Court: Your objection is overruled.

(Said document, so offered and received in evidence, was marked Government's Exhibit 50.)

Mr. Hotchkiss: I will read Government's Exhibit 49 first. It shows at the top of the letter an indication that one letter was sent to Yellow Cab Company, Pittsburgh; Pittsburgh Transportation Company; Parmelee Motor Fuel Company; and Transportation Adjustment Company; that one letter was sent to Chicago Cab Company, Chicago, Chicago Yellow Cab Company and Benzoline Motor Fuel Company on April 1, 1932, the date of this letter.

"Chicago Cab Company,
1221 South Morgan Street,
Chicago, Illinois.

Gentlemen:

"We are desirous of checking our records in connection with your company and ask that you kindly furnish us the following information:

"Date of incorporation, state in which incorporated, corporate address, names and titles of officers, names of the directors.

232 "In order that our records may be correct, we ask that you kindly arrange to mail to this office from time to time notice of any change of officers or directors that may be made.

"The receipt of this information at your convenience will be appreciated.

"Very truly yours,

"Levin Rank, Vice-President."

233 Mr. Hotchkiss: I offer next Government's Exhibit 50, the reply to the letter, Government's Exhibit 49.

(Said document, so offered and received in evidence, was marked Government's Exhibit 50.)

Mr. Hotchkiss: (Reading)

"This is in reply to your letter of April 1st:

"Date of incorporation: June 30, 1930.

"State in which incorporated: Delaware."

I will not read the rest of that.

I next offer Government's Exhibit 51, consisting of a letter from H. J. Masson, Assistant Treasurer, Chicago Cab Company, to Transportation Management Corporation, Attention E. F. Kram.

Mr. Lynton: I object to this offer as being incompetent and irrelevant, and I observe additionally in this respect, this was not in response to any letter from any of the defendants in this case, no authentication whatever. We have admitted nothing with respect to that other than that letter came to us, that we received it. We have not even admitted genuineness.

234 Mr. Hotchkiss: Do you deny the genuineness?

Mr. Lynton: I am making no further concessions with respect to it at this time.

Mr. Hotchkiss: I might comment, your Honor, in view of the type of relations shown to be existing between Transportation Management Corporation and the Chicago Cab Company by the earlier exchange of letters evidenced by Government's Exhibits 49 and 51, I think it is reasonable to assume that Government's Exhibit 51 was received in response to a similar type of inquiry directed to Chicago Cab Company.

Furthermore, the evidence introduced so far does show that the stock of DeLuxe was taken over by Parmelee through a subsidiary, and that thereafter they merged DeLuxe in this Chicago Cab Company, tracing the history of these organizations to the present time.

I submit in view of the relations between the companies, which has been shown by the documents hitherto introduced, that this document is sufficiently authenticated in view of the fact that Parmelee does admit in response to Government's request for admissions on authenticity of the document that this document was received by them.

235 Mr. LYNTON: I understand very well that you have suggested that a lot of these documents may be taken on assumptions which are not evidence. But the fact is here that there is not the slightest proof of authentication.

This problem may arise from time to time in this case. We have attempted to be most considerate in connection with our admissions and in fact have been very profuse with respect to them. But we are not going to be charged with documents we feel we have not any right to admit authenticity on.

All we have here is a piece of paper, plus the fact that that piece of paper was received by one of these defendants. That certainly is no basis for admission as to competency.

Mr. HOTCHKISS: Your Honor, I call attention to the physical exhibits which I think fully and adequately answer the objection made by counsel. I refer to Government's Exhibit 50, which starts out by reciting:

"This is in reply to your letter of April 1st,"

and is addressed to Mr. Levin Rank. Then from that letterhead—

236 Mr. LYNTON: We are not talking about 50. We are talking about 51.

Mr. HOTCHKISS. And I will connect 50 with 51. This letter, Government's Exhibit 50, is on a letterhead of Chicago Cab Company and it is signed by an H. J. Masson, and I note by physical examination of Government's Exhibit 51 that it is on the same letterhead, the same type of letterhead as Government's Exhibit 50, and while at this time I do not have an FBI handwriting expert available, I think that mere examination of the two handwritings shows that the handwriting of the Masson whose signature appears on Government's Exhibit 51 is the same as that handwriting appearing on Government's Exhibit 50 which is obviously in response to a letter from Mr. Rank, an authorized officer of a wholly-owned subsidiary of Parmelee.

Mr. LYNTON: You are not suggesting with respect to 51 that it was received in response to a request by Parmelee, are you?

Mr. HOTCHKISS: You are not admitting genuineness of the letter. You are admitting only that this letter was received?

Mr. LYNTON: That is correct.

237 Mr. Hotchkiss: And I am pointing out from the physical evidence of the documents, by a comparison of the two that if No. 50 is a genuine letter from Chicago Cab in response to a communication from Rank, that certainly 51 is a genuine document, and the defendants admit that it was received by Parmelee.

Mr. Lynton: I just wanted to observe this, that you are making two arguments. You argued for the admission of No. 50 itself on the theory that it was in response to a letter from the defendant Parmelee. That fact does not exist with respect to 51.

Mr. Hotchkiss: I will hand these three documents to your Honor at this time.

The Court: I think it should be received.

(Said document, so offered and received in evidence, was marked Government's Exhibit 51.)

Mr. Lynton: May I inquire whether 51 is being received for the truth of its contents or is it merely being received as a letter which was sent to Transportation Management Corporation?

Mr. Hotchkiss: Do you deny the truth of the contents?

238 Mr. Lynton: I am not a witness. You have the facts in an admission to one of your interrogatories, to which you will refer, and all of this in my opinion is immaterial. If you just skip a few of your exhibits down there you will get the ultimate fact correctly.

The Court: I think it is received in evidence for whatever it contains. You, of course, have a right to refute the authenticity of it, the accuracy of the information contained in it.

Mr. Lynton: I think the record shows sufficiently our objections.

Mr. Hotchkiss: Government's Exhibit 51 reads:

"We notice that you have the date incorporated, shown as July 8th, 1925. This was the old DeLuxe Motor Cab Company, which was taken over by the Chicago Cab Company, the latter being incorporated in the State of Delaware on June 30th, 1930.

"Very truly yours,

"Chicago Cab Company."

I offer Government's Exhibit 52, which is in the same category as the preceding one. It is a letter dated April 20, 1932 from H. J. Masson, Assistant Treasurer,

239 Chicago Cab Company, to Transportation Management Corporation, attention E. F. Kram.

Mr. Lynton: Defendants make the same objection with respect to this proposed exhibit as with respect to Exhibit 51.

The Court: The same ruling.

(Said document, so offered and received in evidence, was marked Government's Exhibit 52.)

Mr. Hotchkiss:

"We wish to advise that the DeLuxe Motor Cab Company has been dissolved."

I offer Government's Exhibit 53, consisting of the minutes of the Executive Committee of the Board of Directors of Checker Cab Manufacturing Company, dated June 30, 1932, the meeting being held at New York.

(Said document, so offered and received in evidence, was marked Government's Exhibit 53.)

Mr. Hotchkiss: (Reading)

"Present: Morris Markin, C. D. Hartman, Jr., being a majority of the Executive Committee and a quorum.

"Mr. Markin called the meeting to order and acted

240 as Chairman thereof, and Mr. C. D. Hartman, Jr., acted as Secretary of the meeting and kept the minutes thereof.

"The Chairman then stated that the Chicago Cab Company operating on a membership basis in the City of Chicago was indebted to this company on May 31st, 1932 in the sum of approximately $220,000. That this obligation is secured by 50 Model G and 6 Model K taxicabs; the balance of the security having been junked over a period of time since the original sale of the cabs. That the membership of the Chicago Cab Company due to the substantial reduction in cab revenue, had been substantially reduced and that there were now operating only 244 cabs, 180 of which were second hand converted foreign cars. That the company is now operating at a loss and will need additional working capital to continue. That one-half of the capital stock of the Chicago Cab Company is controlled by Parmelee Transportation Company but that Parmelee Transportation Company is unable to furnish it with the necessary additional working capital and that

241 the company will shortly be required to suspend.

"He further stated that in the event this Corporation forces its rights against said equipment that little,

if anything, could be realized from a sale thereof and that it was to the best interests of this corporation to permit the transfer of said equipment to the Checker Taxi Company in Chicago by such members of the said Chicago Cab Company as desire to join the Checker Taxi Company fleet. By which action the cabs would be continued in operation and some money could be obtained upon the notes secured by the specific cabs transferred; that to permit such transfer would also assist in preventing interests hostile to this corporation from obtaining a competitive position in Chicago."

By resolution the recommendation was adopted.

Mr. LYNTON: May I read a portion of this last exhibit which is not contained in your book of excerpts?

The COURT: You may.

Mr. HOTCHKISS: That is, from M-25?

242 Mr. LYNTON: That is correct.

Mr. HOTCHKISS: Very well.

Mr. LYNTON: (Reading)

"The Chairman then stated that he had been advised by the Executive Committee of Parmelee Transportation Company that, due to the failure of the New Jersey Fidelity & Plate Glass Insurance Company, Parmelee Transportation Company had found it necessary to utilize all of its available funds to replace the insurance carriers of the New York operating subsidiaries and as a consequence thereof the executives of said company have recommended the sale of not to exceed 25,000 shares of the common stock of Chicago Yellow Cab Company, Inc., owned by said company, in order to obtain vitally necessary additional working capital, and he suggested that this Committee authorize him, on behalf of the Corporation, to consent to such a sale as majority stockholders of Parmelee Transportation Company.

"Upon motion duly made and seconded, the following resolution was unanimously adopted:

243 "RESOLVED that the President or any Vice President of this Corporation be and he hereby is authorized and empowered to execute such consent as may be necessary to authorize the Board of Directors of Parmelee Transportation Company to sell at the best price obtainable therefor up to but not in excess of 25,000 shares of the capital stock of Chicago Yellow Cab Company, Inc., owned by said company, and to execute

such papers as may be necessary or convenient in connection therewith.

"The Secretary of the meeting then stated that in his opinion, from an analysis of the statements of Parmelee Transportation Company, it was necessary and advisable to reduce the executive overhead charges of Parmelee Transportation Company and its affiliates, and to that end he had discussed the matter with Mr. E. H. Miller who had expressed his willingness, upon the suggestion of the Secretary, to withdraw as an executive of said company as his withdrawal would reduce such executive overhead expenses by the
244 amount of approximately $40,000.00 per annum. The Secretary further stated that Mr. Miller had stated his willingness, in the event of his withdrawal, to continue to render such advisory services to said company, without compensation, as might be deemed necessary and as his time might permit.

"Upon motion duly made and seconded, the following resolutions were unanimously adopted:

"Resolved that the arrangement with Mr. E. H. Miller outlined by the Secretary at this meeting be approved and that this Corporation recommend, as stockholders of Parmelee Transportation Company, to the Directors of said Company, the consummation of said arrangement.

"Further Resolved that this Committee hereby expresses its appreciation of the cooperation of Mr. Miller in making said arrangement with Parmelee Transportation Company, and hereby records its gratitude to Mr. Miller for his generous withdrawal at this time."

245 Mr. Hotchkiss: Thank you for calling that to the attention of the court.

I offer Government's Exhibit 54, consisting of certain minutes of directors' meeting of Cab Sales.

(Said document, so offered and received in evidence, was marked Government's Exhibit 54.)

Mr. Hotchkiss: (Reading)

"On vote duly taken, T. L. Winslow was duly and unanimously elected Vice President and Director of this corporation, to hold office as such for the unexpired portion of the term of A. C. Flynn, resigned, and until his successor shall be duly elected and qualified.

"Whereupon, the President presented to the meet-

ing certain correspondence that had passed between this corporation and the Checker Taxi Company, with relation to the acquisition by Checker Taxi Company of certain of the driver personnel and cab equipment of the Chicago Cab Company, and asked the approval of this Board of his acts as officer of the corporation,
246 in respect thereof. The correspondence presented is in words and figures as follows, to-wit:

"July 19th, 1932

Checker Taxi Company,
Chicago, Illinois.

Gentlemen:

"We have recently acquired and are now the owners of certain of the stock of Chicago Cab Company, operating at this time approximately 250 cabs in the City of Chicago.

"Because of present business conditions, it is desirable that operations of that company be suspended for an undetermined period, provided we can arrange with you to take over our driver personnel with cab equipment on certain terms and conditions, and we therefore propose to you the following:

"1. We will cause the Chicago Cab Company to reconvey their cab equipment to their drivers and to release the drivers from their written contracts with that company and to enter into contracts with you on
247 your usual and customary terms, except that you to take them into your organization without charge for initiation fees or collateral, bond deposits or the like."

Dropping down to paragraph 5:

"5. We will procure for you the consent of the Checker Cab Manufacturing Corporation of Kalamazoo, Michigan, to release you from the terms of your contract with them, of date February 5th, 1930, so that you may take into your organization equipment other than cabs manufactured by Checker Cab Manufacturing Corporation, now in the fleet of the Chicago Cab Company.

"6. Approximately 50 per cent of the fleet of Chicago Cab Company is being operated double shift, so that the total additional revenue that would accrue to you by reason of this acquisition would approximate $195,000 per annum, being 250 cabs at an average charge of $65.00 per cab per month. You can handle

this additional business without added expense of operation except as to your insurance cost of $25.00 per
248 month per cab, leaving you a net profit of $40.00 per month per cab, or approximately $100,000.00 per annum. You are to pay us, therefore, in the event you accept this proposal, $20.00 per month per cab for each cab now operating in the Chicago Cab Company fleet conveyed to you, for a period of five (5) years from and after the date of such conveyance.

"7. We are to have a first right and option, expiring July 19th, 1933, to cause Chicago Cab Company to resume operations and to cancel this agreement, in which event you will at our request release any of the Chicago Cab drivers taken into your organization who may then be in good standing with you and elect to sever their contract relations with you, and likewise will reconvey to such drivers their cab equipment. We are, nevertheless, to receive all monies due us hereunder to the date of cancellation of such driver's contracts.

"8. You are to have a first right and option at any time during the period of this agreement after July 19th, 1933, to pay us $100,000.00 in cash, and be re-
249 lieved and discharged of any continuing obligations to us for the balance of the period of this agreement.

"We will appreciate your immediate consideration of this proposal.

"Respectfully yours,

"CAB SALES AND PARTS CORPORATION
By PAUL C. L'AMOREAUX,
President."

The next letter reads:

"July 19th, 1932

"Cab Sales and Parts Corporation,
Chicago, Illinois.

Gentlemen:

"We acknowledge receipt of your proposal in connection with the acquisition by us of certain driver personnel and cab equipment now operating in the fleet of the Chicago Cab Company.

"We accept your proposal in its entirety as set forth in your letter to us on that subject of even date herewith, except as to the following:

"1. In view of the fact that we do not know how long many of the cabs now operating in the Chicago
250 Cab Company, would in the event of their acquisition by us remain in our fleet, we are unwilling to pay you the amount you request, except as said cabs or the replacements thereof operated by the same drivers, may remain with us.

"2. Because of present business conditions, we are likewise uncertain that the storage and other charges that will accrue against these men, pursuant to our usual driver's contracts, will be paid. We are, therefore, unwilling to pay you the amount that you ask unless and until we actually receive payment from such drivers. We will agree, however, to pay you one-half of all the sums of money we collect from drivers operating the cabs conveyed to us pursuant to your proposal, in excess of $25.00 per cab per month, and we will pay you said amount monthly as collected by us.

"Yours very truly,

"CHECKER TAXI COMPANY
EEW By M. M. SOKOL, *President.*"

251 Then another letter of the same date, July 19, 1932, same series:

"Checker Taxi Company,
Chicago, Illinois.

"Gentlemen:

"We acknowledge receipt of your communication of even date following our proposal of like date to you in connection with the acquisition by you of certain driver personnel and cab equipment of the Chicago Cab Company, and herewith advise you that we accept the amendments and changes in our original proposal, as set forth in said communication to us."

I omit the next sentence. Signed Paul C. L'Amoreaux, President, Cab Sales.

Then by resolution, the directors approved of the actions of Paul L'Amoreaux.

Next I offer Government's Exhibit No. 55, consisting of the minutes of directors' meeting of Checker, held July 19th, 1932.

(Said document, so offered and received in evidence, was marked Government's Exhibit 55.)

Mr. Hotchkiss:

252 "M. M. Sokoll, the President, called the meeting to order and A. C. Flynn, the Secretary, recorded the minutes thereof.

"Whereupon, the President stated to the meeting that he had received on July 19th, 1932, a communication from the Cab Sales and Parts Corporation, in connection with the acquisition by this company of certain of the driver personnel and cab equipment of the Chicago Cab Company, which he read to the meeting

. . .

• • •

"The President then stated that he considered it very desirable for the company to acquire such equipment and driver personnel, as it would increase the gross revenue of the company approximately twenty-five percent (25%), and the only added expense the company would have would be the insurance cost on the cabs acquired and, as stated in the communication, the net profit to the company would be approximately $100,000.00 a year; provided the cabs acquired remained in the fleet. He thereupon recommended

253 acceptance of the proposal, provided payment could be made to Cab Sales and Parts Corporation only in the event the cabs remained in the company and the storage and other charge actually collected from the drivers."

Then the recommendation was adopted by the Board.

The next, Government's Exhibit 56, plaintiff's Interrogatory No. 18:

(Said document, so offered and received in evidence, was marked Government's Exhibit 56.)

"To Parmelee, Markin, Cab Sales and Checker (in so far as each has knowledge). With respect to your denials of the allegations of paragraph 28 of the amended complaint, state:

"(a) Whether Chicago Cab Company was incorporated about June 30, 1930;

"(b) The date of each acquisition by you, and your wholly owned subsidiaries, directly and indirectly, of capital stock of Chicago Cab Company, the amount of stock acquired by each acquisition, the name of the seller, and the consideration paid;

"(c) The date of each sale, and other disposition, by you, and your wholly owned subsidiaries, directly

254 and indirectly, of capital stock of Chicago Cab Com-

pany, the amount of stock involved in each transaction, the name of the buyer, and the consideration received;

"(d) Whether Chicago Cab Company suspended operations about July 22, 1932;

"(e) Whether the assets of the Chicago Cab Company were acquired by Checker, whether directly or indirectly, after July 1932;

"(f) Whether a substantial number of the Chicago Cab Company drivers entered into contracts with Checker in 1932 after Chicago Cab Company suspended operations."

Government's Exhibit No. 57, Parmelee's answer to plaintiff's Interrogatory No. 18.

(Said document, so offered and received in evidence, was marked Government's Exhibit 57.)

Mr. Hotchkiss:

"(a) Chicago Cab Company was incorporated in Delaware on May 31, 1930.

"(b) General Transportation Corporation acquired 1,000 shares of Chicago Cab Company about June
255 1930 in consideration of the assets of DeLuxe Cab.

"(c) No sale of stock of Chicago Cab Company occurred.

"(d) (e) and (f) Parmelee Transportation Company has no knowledge of the answers to these subsections."

Government's Exhibit 58, Cab Sales' answer to plaintiff's Interrogatory 18.

(Said document, so offered and received in evidence, was marked Government's Exhibit 58.)

"(d) Yes (e) No (f) Yes".

Government's Exhibit 59, Checker's answer to plaintiff's Interrogatory 18.

(Said document, so offered and received in evidence, was marked Government's Exhibit 59.)

"(d) Yes (e) No (f) Yes".

Mr. Lynton: At this point, your Honor, in order that the record may be clear on it, I offer a standing objection with respect to those transactions affecting DeLuxe and Cab Sales which appears in Exhibits 40 through 59.

I should like the record to be clear that my stand-
256 ing objection relates to those particular documents.

The Court: The record may so show.

Mr. Hotchkiss: Mr. Williams will take up the reading at this point.

Mr. WILLIAMS: I now come to a new subject. It is the acquisition by C.C.M. of the controlling stock interest in Parmelee.

I offer as Government's Exhibit No. 60, minutes of directors' meeting of C.C.M. dated August 13, 1930.

(Said document, so offered and received in evidence, was marked Government's Exhibit 60.)

Mr. WILLIAMS: It shows in the third paragraph that:

"Mr. Markin President of the Corporation, called the meeting to order and acted as Chairman thereof. Mr. Oakland, Secretary of the Corporation, acted as Secretary of the meeting and kept the minutes thereof."

Beginning with the final paragraph on the page:

"The Chairman then stated to the meeting that,
257 acting on behalf of this Corporation, he had received from J. A. Sisto & Co. an assignment of the rights of J. A. Sisto & Co. under an agreement dated October 29, 1929, by and between Parmelee Transportation Company, a Delaware corporation, Metropolitan Distributors Company of Pittsburgh, a Delaware corporation, and J. J. Sisto & Co. He then presented to the Corporation an assignment of the rights which he had obtained under said contract by the assignment to him from J. A. Sisto & Co.

"Upon motion duly made and seconded, the following resolutions were adopted (Mr. Markin not voting):

"RESOLVED that the form and provisions of the assignment to this corporation from Morris Markin of his rights under an agreement dated October 29, 1929, between Parmelee Transportation Company, a Delaware corporation, Metropolitan Distributors Company of Pittsburgh, a Delaware corporation and J. A. Sisto & Co. be and they hereby are in all respects approved and accepted;

258 • • •

"The Chairman then stated that he had an option to purchase 25,000 shares of the Common Stock of Parmelee Transportation Company, a Delaware corporation, at approximately $29.28 per share at any time prior to April 1, 1934, which was granted to him under an agreement dated April 29, 1929, between Parmelee Transportation Company and himself."

I believe the agreement of April 29, 1929, is our Exhibit 7.

"He further stated that he desired to vest in this Corporation all of his rights under said option and

under said agreement without cost to this Corporation, and he presented to this meeting a form of agreement to effect such purpose.

"Upon motion duly made and seconded, the following resolutions were adopted (Mr. Markin not voting):

"RESOLVED that the form of agreement to be executed by Mr. Morris Markin vesting in this Corporation for a nominal consideration all his rights under the op-
259 tion to him granted by Parmelee Transportation Company in the agreement between Parmelee Transportation Company and Morris Markin dated April 29, 1929, to purchase 25,000 shares without par value of the Common Stock of said company at any time on or prior to April 1, 1934, at the price of about $29.28 per share, be and the same hereby is approved, and any Vice-President of this Corporation is authorized, directed and empowered to execute an agreement in substantially said form for such purpose when the same has been approved by counsel for this Corporation;

"FURTHER RESOLVED that the acquisition of said rights from Mr. Morris Markin under said agreement dated April 29, 1929, be and the same hereby is approved and accepted;

* * *

"The Chairman then stated that certain of the officers of this Corporation had been negotiating with him and his associates as the controlling stockholders
260 in Motor Cab Transportation Company for the sale of all of the capital stock of the said company to this Corporation on the basis of approximately net tangible book value for said stock as shown by the balance sheet of said company as at June 30, 1936, to be certified by the accountants for this Corporation, to be payable in Common Stock of this Corporation at $25 per share, and that the Corporation, in connection with this transaction, would also acquire on the same basis all of the capital stock of Alpha Brokerage Company. He further stated that Motor Cab Transportation Company operated, through its subsidiaries, about 2,050 taxicabs in the City of New York, all of which were Checker cabs except 250 which were Saf-T-Cabs; and that it owed this Corporation about $2,000,000 for the purchase of cabs and an open account.

"Mr. Oakland then stated that he wished authority to continue negotiations with the stockholders of Motor

Cab Transportation Company in order that a firm contract with respect to such acquisition might
261 be prepared.

"Upon motion duly made and seconded, the following resolutions were adopted."

Resolutions adopted to carry out this proposal.

I offer as Government's Exhibit No. 61—

Mr. LYNTON: Before you reach that, Mr. Williams, will you stipulate that prior to the Sisto transaction referred to in the minutes of August 13, 1930, Government's Exhibit No. 60, C.C.M. did not own any common shares of Parmelee Transportation Company and did not own any rights to purchase any shares of Parmelee Transportation Company.

Mr. WILLIAMS: Upon your statement that that is a fact, subject to our check, I will so stipulate.

Mr. LYNTON: I so state.

Will you also stipulate a matter of very common knowledge, between the formation of Parmelee Transportation Company, in April, 1929, and the Sisto transaction referred to in these minutes of August 13, 1930, there occurred the stock market crash in October of 1929?

Mr. WILLIAMS: We will so stipulate.

262 Government's Exhibit No. 61 is the minutes of Directors' meeting of Parmelee Transportation Company held in New York on September 9, 1930.

(Said document, so offered and received in evidence, was marked Government's Exhibit 6.)

Mr. WILLIAMS: I will begin reading at the top of page 108:

"Mr. Miller stated that negotiations had been pending between the officers of this company and the officers of Checker Cab Manufacturing Corporation, looking towards a closer affiliation of these two companies, and that the matter had been discussed with virtually all the members of this Board; that Checker Cab Manufacturing Corporation had recently entered into a contract for the acquisition of all of the outstanding stock of Motor Cab Transportation Company, which through subsidiary companies operates the largest fleet of taxicabs in the City of New York, consisting of 2,050 cabs; and that Checker Cab Manufacturing Corporation
263 was prepared to turn over to this Company the stock of Motor Cab Transportation Company, together with $1,442,000 face amount of debentures and

$1,000,000 of preferred stock and warrants and options for over 118,000 shares of common stock of this company, in exchange for shares of common stock of this company. Mr. Miller further stated that the acceptance of the proposal would have not only the highly desired effect of retiring over $2,440,000 of senior securities of this company, with the consequent saving of prior fixed charges, but would, in his opinion, have the effect of putting this company in the dominant position in the City of New York in the taxicab operating business; that there was every hope that the report of the Mayor's committee would afford relief to the taxicab industry and enable it to be operated on a sounder and more profitable basis; that through the joint operation of the two largest fleets in the City of New York many immediate economies could be put
264 into effect, and that substantial additional economies should in time result in a substantial increase in the company's earnings.

"The President thereupon presented and read to the meeting an offer from Checker Cab Manufacturing Corporation addressed to this company. He also submitted a written report, signed by him, recommending the acceptance of the offer. He further presented a written report made by Mr. E. S. Higgins, Vice President of this Company, and a written report by Mr. J. F. McMahon, a member of this Board and one of the company's chief operating experts. He pointed out also that in view of the present financial condition of this company it was highly desirable that it should be able to obtain additional working capital when needed in the carrying out of its future expansion program in the City of New York and elsewhere, and that he felt that this should be assured through the affiliation with Checker Cab Manufacturing Corporation.

"The meeting thereupon proceeded to a discus-
265 sion of the offer and the proposal of Checker Cab Manufacturing Corporation. Mr. Haveron stated that while he was in favor of the proposal, he wished to withdraw from the meeting, in view of the fact that he was also a director of Checker Cab Manufacturing Corporation. Mr. Haveron thereupon withdrew from the meeting.

"Upon motion duly made and seconded, the following resolutions were unanimously adopted:"

Then is set forth the details basically of the plan that was discussed, and has been read heretofore, except for Item 4 which states—I will skip that.

"FURTHER RESOLVED that this Corporation issue to or upon the order of Checker Cab Manufacturing Corporation 422,787 full paid and non-assessable shares of Common Stock of this Corporation;

"FURTHER RESOLVED that the officers of this Corporation are hereby authorized to deliver to Checker Cab Manufacturing Corporation a written acceptance of the above mentioned offer; to issue and deliver
266 certificates for the 422,787 shares of Common Stock of this Corporation as called for therein; and to take any other action necessary or convenient to carry into effect the transaction contemplated by said offer;".

I offer as Government's Exhibit No. 62 notice from Rank, Secretary of Parmelee, of special meetig of the directors, and attached thereto being a letter agreement from Markin, C.C.M., to Parmelee, dated September 5th, 1930, between C.C.M., Markin and L'Amoreaux.

(Said document, so offered and received in evidence, was marked Government's Exhibit 62.)

The COURT: The Court will recess for ten minutes.

(Thereupon a recess was taken.)

The COURT: Proceed.

Mr. WILLIAMS: I skip the first part of Government's Exhibit 62. I will not read the letter dated September 9th. I believe that should be 1930 instead of 1939, on page 110. That is referred to in Government's Exhibit 61, appears on page 108.

Mr. LUNTON: If your Honor please, I would like
267 to go off on a little tangent for the moment.

In connection with the problem of waiver of privilege, Mr. Williams has indicated that if we are unable to agree upon any community of thought as to what transpired, that we might have to take some interlocutory testimony.

He has further indicated that he would like to have Mr. Samuels, who is Vice-President of the defendant, Yellow Cab Company, and an officer of Chicago Yellow Cab Company, present tomorrow morning.

Mr. Samuels had planned to leave Chicago for about two days. During the recess, we ascertained that his plan is to leave in the latter part of the morning.

I had indicated, I think, to Mr. Williams, last week that Mr. Samuels would not be in Chicago for about two days during the middle of this week.

The COURT: Will he be here Friday?

Mr. LYNTON: He will be here Friday.

The COURT: Wouldn't it be convenient to the Government to wait until Friday for his testimony?

Mr. WILLIAMS: Can he be here early tomorrow morning?

Mr. LYNTON: We would have no objection to that,
268 but we would like your Honor's indulgence for him to testify before the motion calendar if that were possible.

The COURT: All right, have him here at 9:45 in the morning.

Mr. LYNTON: Very well.

Mr. WILLIAMS: All right. If we cannot agree then—

Mr. LYNTON: That is right.

Mr. WILLIAMS: I will not read any of this letter dated September 9th, which begins on page 110.

I wish to call the Court's attention to the notice appearing at the bottom of page 111 to the effect that Parmelee accepts the offer contained in this letter to sell to Motor Cab Transportation Company.

Beginning on page 112 is an agreement dated September 5th, 1930, between the Checker Cab Manufacturing Company, of Jersey City, New Jersey, and Morris Markin and Paul C. L'Amoreaux. This contract is from Motor Cab Transportation Company to C.C.M. I will not read that contract.

I offer as Government's Exhibit No. 63 schedules, letters and reports attached to and presumably a part of Government's Exhibit No. 62.

269 (Said document, so offered and received in evidence, was marked Government's Exhibit 63.)

Mr. WILLIAMS: They contain numbered schedules of Motor Cab. I will not read that material except to note on page 117 that there is a letter from E. H. Miller to the other directors of Parmelee Transportation Company recommending that Parmelee buy Motor Cab.

On the following page, 118, is a letter from E. S. Higgins, also a director of Parmelee, to Mr. Miller as President, agreeing with him that the purchase of Motor Cab is desirable.

I wish to point out that in the letter on page 118 from Mr. Higgins to Mr. Miller, the last paragraph upon that page states:

"In view of the above factors and the belief that a dominating position in the cab transportation field in

New York is of very substantial value at this time, I would recommend the acquisition of Motor Cab Transportation Company on favorable terms."

270 I offer as Government's Exhibit 64 minutes of a stockholders' meeting of C.C.M., dated September 25, 1930.

(Said document, so offered and received in evidence, was marked Government's Exhibit 64.)

Mr. WILLIAMS: These matters relate to C.C.M. acquiring the Parmelee common stock and sinking fund convertible debentures from Sisto, and the resolution which appears at the bottom of page 119 is to acquire those stocks and debentures.

On the following page, 120, is a resolution of C.C.M. to acquire Motor Cab Transportation stock from Markin and L'Amoreaux in return for issuing C.C.M. stock to them, which proposal we saw back a few exhibits ago.

At the top of page 121 there is a discussion of exchanging Parmelee Transportation Company sinking fund convertible debentures, convertible preferred stock, warrants and options, and the capital stock of Motor Cab Transportation Company, for 422,787 shares without par value of the common stock of said company, in order that C.C.M. will obtain the controlling stock of Parmelee.

271 I wish to read beginning with the adoption, in the middle of the page:

"The adoption of the following resolution was thereupon moved and seconded:

"Resolved that the acquisition of a controlling interest in Parmelee Transportation Company, a Delaware corporation, outlined in the agreement dated September 9, 1930,—"

That agreement is Government's Exhibit 62.

"between this corporation and Parmelee Transportation Company (which is hereby in all respects approved), and the plans outlined in the letter from Ralph R. Oakland, Vice-President of this Corporation, dated September 12, 1930, be and the same hereby are in all respects approved, ratified, confirmed and adopted: * * *"

And the officers are instructed to take steps to carry that out.

I offer as Government's Exhibit 65 minutes of directors' meeting of Parmelee, dated October 1, 1930.

272 (Said document, so offered and received in evidence, was marked Government's Exhibit 65.)

Mr. WILLIAMS: These minutes relate to details of closing a deal with Checker Cab Manufacturing Company for the acquisition of Motor Cab by Parmelee.

Beginning about the middle of page 123 the minutes relate to Mr. Markin and Mr. L'Amoreaux being made directors of Parmelee. Markin is also made Chairman of the Board of Parmelee at that time.

The balance of the exhibit relates to agreements working out details of C.C.M. acquiring stock control of Parmelee. I will not read it.

I offer Government's Exhibit 66, minutes of directors' meeting of Parmelee, dated October 16, 1930.

(Said document, so offered and received in evidence, was marked Government's Exhibit 66.)

Mr. WILLIAMS: These minutes relate to making Ernest H. Miller, Morris Markin and Paul L'Amoreaux an executive committee of Parmelee with the same powers as the Board of Directors.

273 I will read the resolution appearing on page 129:

"RESOLVED that the President and any Vice-President of this Corporation be and they hereby severally are authorized, directed and empowered, acting on behalf of this Corporation and in its name, as the sole stockholder of Motor Cab Transportation Company, a Delaware corporation, to execute any and all consents that may be necessary or convenient under the General Corporation Law of the State of Delaware to effect a transfer of assets of said Motor Cab Transportation Company and a dissolution thereof, and to vote for such action, and to do any and all other acts and things that may be advisable in the premises; * * *".

I will not offer Government's Exhibit 67 at this time. I understand there is a claim of privilege, and I will leave that until we can handle all the matters involving privilege at one time.

I offer as Government's Exhibit 68 a letter dated November 24, 1945 from Mr. Oakland, Vice-President
274 and Treasurer of C.C.M., to Mr. R. E. Niederwiesen.

Would you stipulate that the R. E. Niederwiesen is the firm of accountants employed by C. C. M.?

Mr. LYSTON: I will stipulate that they were a firm of accountants and they were employed at that time by C.C.M. However, before you proceed to read, I have a series of objections to this document.

One of the objections is a partial objection involving the question of privilege. It relates to the post script which

you have as part of the document. If you wish to offer it now I will make all of the objections. If you wish to reserve it, I will reserve the objections.

Mr. WILLIAMS: I would as soon reserve it, and take up all questions of privilege at one time.

Mr. LYNTON: All right.

Mr. WILLIAMS: Then I withdraw the offer of No. 68 at this time.

I offer Government's Exhibit 69, interrogatory served by the government on C.C.M., relating to the acquisition of the stock of Parmelee by C.C.M.

275 (Said document, so offered and received in evidence, was marked Government's Exhibit 69.)

Mr. WILLIAMS: I also offer as Government's Exhibit 70 the answer to that interrogatory.

(Said document, so offered and received in evidence, was marked Government's Exhibit 70.)

Mr. WILLIAMS: The answer is:

"Parmelee issued 422,787 shares of its common stock to CCM in consideration of the transfer by CCM to Parmelee of 10,000 shares of $100 par value 6% preferred stock of Parmelee, $1,422,000 principal amount 6% debentures of Parmelee, 118,425 warrants to purchase common stock of Parmelee, 500 shares of preferred and 375,500 shares of common stock of Motor Cab Transportation Corporation, 500 shares of stock of Alpha Brokerage Company and 100 shares of Equity Adjustment Bureau."

I offer as Government's Exhibit 71 Interrogatory No. 14 served on Parmelee.

(Said document, so offered and received in evidence, was marked Government's Exhibit 71.)

276 Mr. WILLIAMS: I will not read this interrogatory. I believe the answer is clear.

I offer as Government's Exhibit 72 Parmelee's answer to this interrogatory.

(Said document, so offered and received in evidence, was marked Government's Exhibit 72.)

Mr. WILLIAMS: The answer states:

"(a), (b), and (c) Universal Renting Corp., was merged into National Transportation Co., Inc. on April 19, 1932. The certificate of merger was filed April 22, 1932.

"Portrans Realty Corporation, formed from the consolidation of Yellow Taxi Realty Corporation and One

East 140th Street Corporation, and National Transportation Co., Inc. were consolidated on November 29, 1943 into National Transportation Co., Inc. The certificate of consolidation was filed November 30, 1943."

The complaint and answer show that National Transportation Co., Inc is a wholly-owned Parmelee subsidiary operating taxicabs in New York City.

277 "National Transportation Co., Inc. acquired certain taxicabs, tools and equipment from Hamilton Peters Operating Co., Inc., and Yellow Taxi Corporation, New York, affiliated companies, during 1934 and 1935; * * *"

They refer to Interrogatory No. 6, which relates to that.

"(d) Parmelee Transportation Company purchased all of the outstanding stock of Motor Cab Transportation Corporation from Checker Cab Manufacturing Corporation on October 1, 1930 pursuant to an agreement dated September 29, 1930. Subsequently, Parmelee Transportation Company dissolved such corporation and received in dissolution all assets of Motor Cab Transportation Corporation."

I offer as Government's Exhibit 73, minutes of the meeting of Executive Committee of C. C. M., dated September 23, 1932.

278 Mr. LYNTON: I have an objection to this exhibit, on the ground that it is immaterial and irrelevant.

I would like, if the Court please, to make an observation with respect to the development of these exhibits as we go along.

In the beginning a number of things which the defendants considered to be irrelevant might conceivably, although we doubt it, be subject to some connection later by the Government.

We now approach the beginning of a great many documents which seem to us to have no possible relevancy, and these will become increasingly more and more burdensome in this respect.

This particular exhibit, for example, refers to problems of operating losses of the operating companies during the year 1932 when the depression was at its worst, perhaps. And it seems to us they have no possible relationship either to sales of cabs or to the transfer between Chicago railroad stations.

One of the difficulties that we face is that once we begin to go into something that we think is irrelevant you get a

collateral approach to that something, and then you
279 get a collateral approach to something else, with the result that as we go along we believe we are in very, very remote fields indeed and, therefore, I would like to make this objection at this time with respect to this document.

The COURT: Will Counsel for the Government state the relevancy of this document?

Mr. WILLIAMS: These are minutes of the Executive Committee of C. C. M. It shows that Morris Markin executed before the meeting, on behalf of C. C. M., an agreement with Parmelee arranging for the consummation of refunding of these equipment notes and other obligations. It refers to equipment notes and other obligations of the subsidiary of Parmelee.

One of the important issues here is the power of Markin and C. C. M. to control Parmelee, its wholly-owned subsidiary, and Chicago Yellow Cab and the subsidiary Yellow Cab in the purchase of cabs. We do not have any concession from defendants. They dispute the fact that that power existed and that these companies were to protect the market
for C. C. M. This document shows that Markin is
280 really the man who runs C. C. M., and he enters into an agreement to help Parmelee out of financial difficulties. Then it is submitted to the Executive Committee of C. C. M. for ratification. It also shows Parmelee was really operated as a subsidiary of C. C. M. It shows the close relationship of the two companies.

The COURT: The purpose of introducing No. 73 is to show a circumstance to indicate Markin's control over C. C. M.?

Mr. WILLIAMS: Correct, and Parmelee.

The COURT: And Parmelee.

Mr. LYNTON: This is a meeting of Parmelee. Mr. Markin is not recorded as being present at this meeting. In September, 1932 the President of Transportation Management Corporation was Mr. Ernest Miller. Mr. Markin at that time was President of C. C. M. The problems are here, in so far as they may relate at all to cabs, is, how is Parmelee, in view of these recorded facts of the depression, going to make a payment on past due obligations? That is the only problem here. There is no indication Mr. Markin personally had any control, nor is there any indication that he has any control of C. C. M. This is solely an en-

281 tirely a meeting of Parmelee dealing with the problems of the depression, and what they might do by way of arm's length arrangement with C. C. M. to defer payments of installments.

Mr. Williams: Our position is it does not show arm's length arrangements. It shows C. C. M. going to considerable lengths to prevent from Parmelee from going under during the depression, and the purpose of C. C. M., of course, was to protect Parmelee and keep it going as a market for C. C. M. taxicabs.

Mr. Lynton: You haven't any evidence to that effect.

Mr. Williams: That is the relevancy.

Mr. Lynton: That is an argument you base on this kind of thing.

Mr. Williams: It shows the great length C. C. M. and Markin went to to keep Parmelee going throughout the depression.

The Court: Did I hear you say a moment ago Markin was not present?

Mr. Lynton: Yes. He was not present at this meeting.

The Court: You are now referring to Exhibit 73?

Mr. Lynton: Excuse me, sir.

The Court: It says here: "Present: C. L.
282 Hartman, Jr. and Morris Markin."

Mr. Lynton: Yes, you are perfectly right. This is C. C. M. I was looking at the subsequent one, of Parmelee.

The Court: Here, again, it may be a link in the chain of evidence and I don't think I should deny the government the right to present it, subject, however, to it being connected up later on, if shown to me.

(Said document, so offered and received in evidence, marked Government's Exhibit 73.)

Mr. Lynton: Very well. I will simply record my objection, as I have indicated that beginning about here there is a springboard to more and more collateral matters, and I may impose on the court's indulgence to make some more specific objections of this type as I think it gets more and more remote.

The Court: You may state the objections.

Mr. Williams: I wish to read from Government's Exhibit 73, beginning at the top of page 133:

"The Chairman then stated that the extended in-
stalments of the equipment notes of Hamilton-Peters
283 Operating Co., Inc., National Transportation Co.,

Inc. and Yellow Taxi Corporation, New York, New York operating subsidiaries of Parmelee Transportation Company, became due on August 1, 1932, and although demand had been made for the payment thereof, these operating companies had not obtained sufficient cash to fully pay the matured instalments and interest. He further stated that although Fisk Discount Corporation, a subsidiary of this corporation, the present holder of the equipment notes, had the legal right to foreclose on the security and obtain a judgment for any deficiency arising after foreclosure, he deemed it imprudent for it to enforce its legal rights at the present time, inasmuch as the amount realized upon foreclosures would not be a substantial amount of the indebtedness, and any deficiency judgment would be uncollectible and would probably force the operating companies into bankruptcy. He further stated that

284 the management deemed it advisable to extend and refund these equipment notes, together with other indebtedness owing by their guarantor, Parmelee Transportation Company, so that these companies might through operations have the opportunity of paying off the equipment notes and any other notes that might be given in connection with such refunding. He further stated that it was the opinion of the management that if this was done Parmelee Transportation Company would be able to make available a substantial amount in cash at the present time to be applied against such notes, and that substantially more would be realized over a period of time than would be realized if Fisk Discount Corporation rigorously enforced its legal rights.

"The President then stated that he had executed on behalf of this Corporation an agreement with Parmelee Transportation Company, arranging for the consummation of the refunding of these equipment notes and other obligations, and he presented to the meeting a copy of said agreement, dated September 1, 1932."

285 Thereupon the resolution was adopted ratifying the act of Markin.

I offer as Government's Exhibit 74 minutes of the Directors' Meeting of Parmelee, dated September 28, 1932. That is five days after the preceding minutes of C. C. M.

Mr. LYNCH: I make a like objection as with respect to the last exhibit, but couple that with the observation that in this meeting Mr. Markin was not present.

Mr. Williams: That is correct.

The Court: The same ruling.

(Said document, so offered and received in evidence, was marked Government's Exhibit 74.)

Mr. Williams: (Reading)

"The Chairman of the Executive Committee then stated that although the operation of the Corporation had resulted in substantial losses, and that the Corporation had not received sufficient income to meet the interest requirements on its 6% Sinking Fund Convertible Debentures which was payable on October 1, 1932, he felt that there was a fair possibility that the benefits to the taxicab operating industry which would
286 accrue through the appointment of the Board of Taxicab Control in New York City would begin to be felt during the winter months, provided, of course, there was some improvement in business conditions. He further stated that although he believed the directors would be justified in defaulting in the payment of the interest on the debentures on the past earnings record of the Corporation, he believed that a default at this time would result in a receivership or in bankruptcy, which would deprive the Corporation of any of the benefits to it that might accrue during the winter months, and, accordingly, he considered it advisable and to the best interests of the debenture holders and the stockholders of the Corporation (although under normal circumstances he would not make such a recommendation), to pay out of working capital the interest on the debentures due on October 1, 1932, inasmuch as a default in interest at this time would place the Corporation in a position in receivership or bankruptcy
287 where the debenture holders would be able to realize very little from a liquidation of its assets. The Chairman reminded the directors that a continuation of the Corporation in business, in his opinion, represented the sole method which would permit the debenture holders eventually to realize a substantial amount on their investment.

"The Chairman then stated that Yellow Taxi Corporation, New York, National Transportation Co., Inc., and Hamilton-Peters Operating Co., Inc., operating subsidiaries of this Corporation in New York City, were indebted to Fisk Discount Corporation on equipment notes, of which installments aggregating

$221,269.39, including interest, became due on August 1, 1932. He further stated that the balance due after the payment of these instalments was considerably in excess of $1,000,000, and that the payment of these instalments had been guaranteed by this Corporation. He further stated that Fisk Discount Corporation, after negotiations, had agreed that if this Corpora-
288 tion made available to one or more operating subsidiaries sufficient cash to pay a substantial portion of the instalments due August 1, 1932, and such payment was made, Fisk Discount Corporation would (1) reduce and extend the amount of the equipment notes; (2) accept the 6% joint Series A promissory notes of this Corporation and the respective operating subsidiary, payable coincident with the payment of the debentures of this Corporation, for the difference between the present amount of such equipment notes, plus accrued interest, and the amount of the equipment notes as reduced, and like Series A promissory notes of this Corporation for other indebtedness owing by it to Fisk Discount Corporation and to Checker Cab Manufacturing Corporation, such joint promissory notes to be amortized out of all available net income received by this Corporation after the payment of interest on the debentures, and such joint promissory notes to be due immediately in the event of the receivership or bankruptcy * * *"

289 A resolution was then passed approving the action of Higgins, who reported.

"He then stated that on behalf of this Corporation he had consummated these negotiations and he submitted to the meeting copies of the various instruments that he had executed in connection therewith on behalf of this Corporation."

I will skip the resolution which approves that action.

"Upon motion duly made and seconded, the following resolutions were unanimously adopted:

"Resolved that any officer of this Corporation is authorized, directed and empowered to make such arrangements for the depositing of the stock held by this Corporation in Chicago Yellow Cab Co., Inc. in a voting trust, or otherwise to preserve the equity control of this Corporation in said Chicago Yellow Cab Co., Inc."

I offer as Government's Exhibit 75 minutes of the Executive Committee of part of the directors of C. C. M., dated September 26, 1933.

Mr. LYNTON: I object on the ground of irrelevancy
290 and immateriality and, if I may jump your next two exhibits, I offer the same objection with respect to Exhibits 73 through 77, if I may have a standing objection on those particular exhibits.

The COURT: The record may show the objection.

(Said document, so offered and received in evidence, was marked Government's Exhibit 75.)

Mr. WILLIAMS: Government's Exhibit 75 states:

"The Chairman then stated that Parmelee Transportation Company was in need of funds to meet the interest on its debentures due October 1, 1933, and he suggested that the Executive Committee consider a loan to Parmelee Transportation Company for such purpose.

"Upon motion duly made and seconded, the following resolution was unanimously adopted:

"RESOLVED that this Corporation lend the sum of $90,000 to Parmelee Transportation Company, a Delaware corporation, upon its demand note, bearing interest at the rate of six per cent per annum for said sum, . . ."

291 I offer Government's Exhibit 76, minutes of directors meeting of C. C. M., dated December 23, 1935.

(Said document, so offered and received in evidence, was marked Government's Exhibit 76.)

Mr. WILLIAMS: Mr. Markin was present at this meeting and acted as Chairman of the Board:

"The Chairman stated that the corporation's subsidiary, Parmelee Transportation Company, was indebted to the Checker Cab Manufacturing Corporation in the amount of $1,338,943.24 against which the corporation had heretofore set up a 100% reserve and in the additional amount of $549,118.57 against which no reserve had been setup; that he recommended that the said indebtedness of Parmelee Transportation Company in the amount of $1,338,943.24 be written off against said reserve and recorded on the records of Parmelee Transportation Company as a contribution of like amount to its capital, and that the Checker Cab Manufacturing Corporation make a further contribution of
292 $549,118.57 to the capital of its said subsidiary, Par-

melee Transportation Company, by cancelling the the indebtedness due from Parmelee Transportation Company in that amount plus interest thereon, and that said contribution of $549,118.57 be recorded on the balance sheet of Checker Cab Manufacturing Corporation by increasing by a like amount, the book value of its investment in the capital stock of Parmelee Transportation Company.

"Mr. Pruitt stated that the proposed contribution to the capital of Parmelee Transportation Company had been discussed with the company's auditors, Messrs. Arthur Young & Company, who by letter of opinion to him dated December 21st, had stated that the accounting treatment of the contribution should be effected by a transfer from the notes receivable account to the investment account with adequate explanation given in the Auditors' certificate so that the stockholders will be properly advised of the contribution."

The resolution was then adopted accordingly.

293 I will not offer Government's Exhibit 77 at this time, nor No. 78.

I offer as Government's Exhibit 79 Minutes of Directors Meeting of C. C. M., dated April 26, 1940. Mr. Markin again acted as Chairman of this meeting.

Mr. Lynton: I again object to this on the grounds of irrelevancy and immateriality.

The Court: Objection overruled.

(Said document, so offered and received in evidence, was marked Government's Exhibit 79.)

Mr. Williams: This relates to C. C. M. borrowing the sum of $150,000 from National Transportation Co., at 4% to be repaid at $150 per cab on each new taxicab delivered by C. C. M. to National Transportation Co.

National Transportation Co. is a subsidiary of Parmelee operating in New York, as shown by preceding exhibits.

I offer as Government's Exhibit 80 a letter from R. J. Wyatt, of Parmelee, to Mr. Oakland of C. C. M., dated August 13, 1941.

Mr. Lynton: I object to this on the ground of irrelevancy, and I will confine it to that objection.

294 It seems to me that there is utterly no relationship to the issues in this case. This deals with a question of a deposit with the Commissioner of Motor Vehicles, 1941.

The Court: What is the purpose of offering this?

Mr. WILLIAMS: This again shows the close relationship of the companies, and when one gets into trouble and needs money, it borrows from the other. We will show they engaged in a common enterprise, the stock ownership ties in, and this shows that Parmelee asked for a loan of $75,000 from C. C. M., and got it.

Mr. LYSTON: At this time C. C. M. owns 61.75 per cent of the stock of Parmelee. What has this to do, though, with this case?

Mr. WILLIAMS: I just explained the point of relevancy.

Mr. LYSTON: I object to it. I think this is utterly irrelevant, if your Honor please.

Mr. WILLIAMS: Will you stipulate that C. C. M. has controlled the actions of Parmelee?

Mr. LYSTON: I will not stipulate any such conclusions such as you assert.

295 On your theory every single piece of paper that might be exchanged between two people might tend to that conclusion. You have a concrete fact in 1941 as to stock ownership. I think this particular letter proves nothing, and I object to it as irrelevant.

The COURT: It is a letter from whom?

Mr. WILLIAMS: From Parmelee to C. C. M., stating that the New York cab operations of Parmelee are in need of about a $75,000 loan, and asks whether C. C. M. will loan that money to them. The next exhibit shows that the loan was made.

Mr. LYSTON: And you argue that the question of whether or not a loan was made in 1941 has some relevancy to the sales of cabs or the transfer between Chicago railroad stations of baggage and passengers?

Mr. WILLIAMS: It shows the relations between C. C. M. and Parmelee. Our position is that Parmelee is a creature of C. C. M. and maintained by it for the purpose of giving it a protected market and monopoly for cabs in New York, Chicago, Minneapolis and Pittsburgh.

Here we have Parmelee writing to its parent, C. C. M., and saying, "Our New York cab operation needs

296 $75,000. Will you kindly provide it?"

Instead of going to a bank, which would be the normal procedure, it goes to the parent. It shows they are engaged in a common enterprise.

C. C. M. writes back and promptly gives them a loan, without any question about it, as shown by Exhibit 81, which I will offer next.

297 Mr. LYNTON: My point is that you have a corporation in 1941 owning 61.75 percent of the stock of another corporation. It is so usual as a matter of business transactions for corporations having that stock ownership or similar stock ownership to engage in loans by one to another, that it has absolutely no relationship to the conspiracy charged here in 1929.

Mr. WILLIAMS: This conspiracy charged runs up to the date of the complaint.

Mr. LYNTON: I understand, but at this point you have a stock ownership of 61.75 percent. Our argument is that this contributes nothing to that stock ownership.

The COURT: C. C. M. had a 61.75 percent interest in Parmelee?

Mr. LYNTON: In this year.

The COURT: In Parmelee, in this year?

Mr. LYNTON: In 1941.

Mr. WILLIAMS: Where this issue of control has come up in other antitrust cases the defendants have disputed this fact as a matter of law. They say that stock ownership is not enough to show control, that you must show acts of control.

298 If counsel will stipulate that control did exist and was exercised, we do not need this exhibit; otherwise, we have to show the acts of control, to show the relations.

Mr. LYNTON: My argument is that this is not an act of control.

I don't know what you mean by an act of control. I understand what happens when it is said that one corporation owns a stated percentage of the stock of another corporation. Whether that constitutes stock control or some other form of control is a vague characterization that I do not think can be discussed here.

Mr. WILLIAMS: It might be purely for investment purposes. We want to show it goes beyond investment. It shows close relations between the companies.

The COURT: It may have some value. At this stage I cannot say that it has. So I will let it go in, subject to being stricken later.

(Said document, so offered and received in evidence, was marked Government's Exhibit 80.)

Mr. WILLIAMS: I offer Government's Exhibit 81, which is a letter from R. E. Oakland, Vice-President and

Treasurer of C. C. M., to Wyatt, Treasurer of Parmelee. This is a reply to the letter, Exhibit 80, showing it was properly complied with.

Mr. LYNTON: Same objection.

The COURT: Same ruling.

(Said document, so offered and received in evidence, was marked Government's Exhibit 81.)

Mr. WILLIAMS:

"Please make up the note and execute it and send it on to us, in accordance with this letter."

I offer as Government's Exhibit 82 minutes of directors' meeting of C. C. M., dated December 19, 1945.

Mr. LYNTON: Same objection.

The COURT: The same ruling.

(Said document, so offered and received in evidence, was marked Government's Exhibit 82.)

Mr. WILLIAMS:

"3. Mr. Oakland then explained that in August, 1932, this corporation had reduced the book value of its investment in the stock of Parmelee Transportation Company to $1 per share, or an aggregate
300 amount of $445,787, by debiting its paid in surplus account with the sum of $3,417,267.22; also, that in December, 1935, this corporation had contributed to the capital surplus of Parmelee Transportation Company the indebtedness of that corporation owed to this corporation in the amount of $1,338,943.24, said indebtedness being written off against the reserve for bad debts which had been created out of the earned surplus of the corporation, and that in the same month this corporation had also contributed to the capital surplus of Parmelee Transportation Company in additional indebtedness owed by that company to this corporation in the amount of $600,417.77, thereby increasing the book value of the 445,787 shares of Parmelee Transportation Company stock owned by this corporation to $1,046,204.77. Mr. Oakland then called attention to the great improvement in the asset value, market value and earnings of the stock of Parmelee Transportation Company which had been brought
301 about since 1932, and expressed the opinion that the true value of 445,787 shares of the stock of Parmelee Transportation Company owned by this corporation is now in excess of the original cost thereof to the corporation and expressed the opinion that it would be in

the best interests of this corporation and its stockholders to have its books of account and balance sheet reflect the actual cost of said shares to the corporation, including the contributions made in 1935, rather than the value at which said investment has been heretofore carried on the books and balance sheet. Mr. Oakland then recommended that the value of said 445,787 shares of the stock of Parmelee Transportation Company carried on the books of the corporation since 1935 in the amount of $1,046,204.77 be increased to and restored to an amount that would show the acquisition cost of said shares and subsequent donations made by this corporation through the elimination of certain indebtedness owed to it by Parmelee
302 Transportation Company, thereby increasing the valuation of the Parmelee Transportation Company stock on the books and balance sheet of this corporation from $1,046,204.77 to $5,802,415.23, and that the amount so added to such valuation, or $4,756,210.46 be credited to the capital surplus account of the corporation. Mr. Oakland further stated that he had discussed this recommendation with the corporation's auditors, R. E. Niederwiesen Co., and that the same met with their approval. After general discussion, upon motion duly made and seconded, the following preambles and resolutions were unanimously adopted:—"

The resolution then carries out the proposal.

I will not offer Government's Exhibit 83 at this time.

Mr. LYNTON: Your Honor, this exhibit presents so unique a suggestion of admissibility that I would like at this time to see the original.

The COURT: Which one?

Mr. LYNTON: 83.

Mr. WILLIAMS: I say, I am not offering it.

Mr. LYNTON: You say you are not?

303 Mr. WILLIAMS: I am not.

Mr. LYNTON: Very well.

The COURT: I guess that settles the argument.

Mr. LYNTON: Very satisfactorily.

Mr. WILLIAMS: I think it will come up. We will offer it later.

Mr. Hotchkiss will take over now.

Mr. HOTCHKISS: The next group of documents deals in general with the question of acquisition by Cab Sales and Parts Corporation of control over the Checker Taxi Company and then, with the Checker Cab Manufacturing Com-

pany, the manufacturing organization, acquiring control over both of those companies—Cab Sales and Checker, and the first deals with the question of settlement of litigation between Checker Cab Manufacturing and Checker.

I offer Government's Exhibit 84, which consists of a telegram from Benjamin Samuels of Yellow to Markin, dated May 14, 1929.

Mr. LYNTON: Before we embark on this adventure, I have a basic objection to the next long line of proposed documents.

That objection is founded on these considerations.
304 Long before this alleged conspiracy, the date of the commencement of which is asserted by the complaint to be January, 1929, Checker Taxi Company and CCM had an exclusive arrangement for the purchase and sale of cabs. That went back to the early twenties. As a matter of fact, Checker Taxi was CCM's first customer, and there was a relationship between the two which accounted for the name "Checker Cab Manufacturing Company."

There were sales of CCM cabs to Checker Taxi from 1922 on. In addition to that, there was no change in the relationship of sales of cabs between these two companies which arose in 1929. Consequently, it seems to us that all of these documents become irrelevant and immaterial because the charge of the conspiracy is that something was done in 1929 which changed an existing situation. That did not happen.

Mr. HOTCHKISS: That is to be taken as testimony on the facts?

Mr. LYNTON: I have made an argument.

Mr. HOTCHKISS: There is no testimony with respect to the matters concerning which counsel has testified. However, the documents which the Government is offering do
305 show that irrespective of what may have been the relationships between the Checker Taxi Company and the Checker Cab Manufacturing Company prior to 1929, that in 1929 those two companies were engaged in apparently rather bitter litigation, and that that litigation was settled. It was settled with the assistance of Checker's competitor, Yellow; and that the settlement agreement contained as a vital and important part a provision not only once, but repeated time and time again, that Checker Taxicab Company, the defendant in this case, was required to purchase its cabs from Checker Cab Manufacturing Company.

In other words, the evidence which is presented here has a very direct bearing upon the allegations contained in the complaint, allegations that the defendants here combined and conspired to secure a monopoly in the matter of the sale of Checker cabs to these operating companies.

Here we are presenting the sequence of steps by which Checker Cab Manufacturing was assured of that monopoly, and I can see very few items, few items that have been offered, that could be more material and more relevant.

Mr. Lynton: With that last I agree, but I may say, since you have referred to a litigation, that the basis of
306 that litigation was an agreement made in 1925 between Checker Taxi and CCM for the exclusive purchases for a period of five years of cabs. The contest was whether or not that was a valid agreement. The suit was started in this court and was referred to a special master—

307 Mr. Hotchkiss: Your Honor, I suggest that it would be quite appropriate for counsel to hold this testimony for introduction during the defense part of the case. If counsel desires to be sworn in as a witness to testify on these points, that will be one thing, and he may do that.

The Court: I think you have stated your objection for the record.

Mr. Lynton: That is the basic objection to the entire line of documents.

The Court: I will overrule the objection.

(Said document, so offered and received in evidence, was marked Government's Exhibit 84.)

Mr. Lynton: May I have a standing objection then with respect to all of these?

The Court: You may, the whole series.

Mr. Hotchkiss: Government's Exhibit 84 is a telegram from Benjamin Samuels of Yellow to Markin:

"Believe it important to have conference within next few days reference Checker Chicago Litigation STOP If convenient to you can make appointment for next Monday at latest with their representative and
308 am confident that a proper disposition of the entire litigation can be arrived at with very little trouble STOP Wire reply as soon as convenient. . . . Charge Yellow Cab Co. Franklin 6290."

I offer as Government's Exhibit 85 a telegram from Markin to Samuels, dated May 15, 1929. I note that the previous telegram was dated May 14th. This telegram reads:

"Call me twelve o'clock your time."

(Said document, so offered and received in evidence, was marked Government's Exhibit 85.)

Mr. Hotchkiss: I offer Government's Exhibit 86, consisting of a letter from Samuels to Ernest Miller, dated May 20, 1929.

(Said document, so offered and received in evidence, was marked Government's Exhibit 86.)

Mr. Hotchkiss: It reads as follows:

"I had a conference today with Charlie Barrett and Weinshenker, and Weinshenker says that he cannot get back of our ordinance in connection with the limitation of licenses, unless the litigation with the Checker Manufacturing is gotten out of the way. He is very anxious to have a conference with Mr. Markin and Mr. Barrett suggests that such a conference be held, but Weinshenker has received instructions from the officers of the Taxi Co. under no circumstances to sit in on any conference with Mr. Markin's attorney, Lamoreaux. Apparently, there is considerable feeling between these parties.

309

"I spoke to Mr. Lamoreaux and I understand his position thoroughly. He states that he is in favor of a settlement if it can be brought about, and he will not under any circumstances put any stumbling blocks in the way of it, but there are two propositions which he insists upon. First, that the settlement must be such as will be approved by Judge Wilkerson of the Federal Court, and second, it must be made under such circumstances that it will be recognized by the Checker Taxi Co. as properly authorized. In these respects, he is absolutely correct, and I believe that if properly handled the two objections raised by Mr. Lamoreaux can be taken care of.

310

"I think that if you will get in touch with Mr. Markin and show him this letter, that he ought to be convinced that a meeting such as suggested by Mr. Barrett and Mr. Weinshenker should be held without any further delay, and I am certain that all details in regard to a proper, fair settlement to dispose of this litigation would be arrived at. Of course, it goes without saying that Mr. Markin should under no circumstances enter into a final agreement unless the same has the full sanction and approval of Mr. Lamoreaux, and from his attitude I am certain that he will approve anything that Mr. Markin finally arrives at, if the Court will approve the settlement and the proper au-

thority is given by the Taxi Co. At any rate, we will get nowhere on the question of the limitation of taxicab licenses as long as this litigation is hanging in the balance, and that is the important thing just now, and as Mr. Markin really feels it would be a tremendous advantage to have the Federal Court litigation
311 definitely determined, I think quick action at this time, will bring it about so that both measures will terminate for the benefit of all concerned.

"I am certain that Mr. Barrett's suggestion in the matter should be followed, and this should not embarrass either Mr. Markin or Mr. Lamoreaux, because I would not want him to act in the matter, without the full knowledge and advice of his personal attorney.

"Will you be good enough, therefore, to communicate with him at your earliest opportunity and advise me."

Mr. Hotchkiss: I offer Government's Exhibit 87, being minutes of Directors Meeting of Checker Cab Manufacturing Company, dated January 10, 1930.

(Said document, so offered and received in evidence, was marked Government's Exhibit 87.)

312 "Mr. Markin, President of the Corporation, called the meeting to order and acted as Chairman thereof.

"The Chairman then submitted to the meeting a form of settlement contract to be executed by this Corporation and Checker Taxi Co., an Illinois Corporation, and Cab Sales & Parts Corporation, a Delaware corporation, for the purpose of disposing of certain litigation between this Corporation and Checker Taxi Co.

"After a full discussion of the terms and provisions of the form of contract submitted to the meeting, the following resolutions were, upon motion duly made and seconded, unanimously adopted:"

And this form of settlement was approved. I won't read the rest.

Now, I suggest, your Honor, that the next exhibit is a rather lengthy one, and I think the Court's usual adjournment time is coming close.

The Court: You suggest we adjourn now?

Mr. Hotchkiss: I suggest we adjourn now.

The Court: Not hearing any objection, the suggestion is accepted.

313 (Thereupon an adjournment was taken to 9:45 o'clock a. m. of the following day, Wednesday, May 19, 1948.)

314 No. 46 C 1339

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
YELLOW CAB COMPANY, *et al.*, DEFENDANTS.

Before Judge LaBuy
Wednesday, May 19, 1948,
9:45 o'clock a. m.

Trial resumed pursuant to adjournment.

Present:

Mr. Hotchkiss
Mr. Williams
Mr. Lynton
Mr. Ginsberg
Mr. Fuller
Mr. Climenko

The CLERK: Case on trial.

In the same matter, on trial, motion plaintiff for order directing issuance of one subpoena *ad testificandum*.

Mr. HOTCHKISS: For an out-of-state witness. I should appreciate it.

The COURT: Motion allowed.

Mr. HOTCHKISS: Mr. Benjamin Samuels.

315 BENJAMIN SAMUELS, called as a witness herein, on behalf of the government, having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. HOTCHKISS:

Q. Will you state your name for the record, please? A. Benjamin Samuels.

Q. And what is your address? A. 5421 Cornell Avenue, Chicago.

Q. What is your occupation? A. President of Chicago Yellow Cab Company and Vice President of Yellow Cab Company.

Q. And how long have you held those positions? A. Well, different lengths of time. I went with the cab company in 1918.

Q. Which cab company are you speaking of? A. Yellow Cab Company.

Q. Yellow Cab Company? A. And I have been with them continuously ever since. I was made a member of the Board I think in 1929, finally elevated to the Vice

Presidency of Yellow, later to the Presidency of
316 Chicago Yellow.

Q. Have you been an officer of one or the other corporation since 1929? A. I would say so, yes.

Q. Who were the attorneys for Yellow and Chicago Yellow?

Mr. LYNTON: I object to the form of the question. It is indefinite. In respect of what? In respect of this case, or what?

By Mr. HOTCHKISS:

Q. Who are the attorneys for Yellow and Chicago Yellow who are retained generally to handle the business affairs of the corporation? A. The firm of Kirkland, Fleming, Green, Martin & Ellis are our corporation attorneys, but we use many others.

Q. Have they been your attorneys since 1929? A. No, a little later than that.

Q. About what year? A. I would say about a year later.

Q. Do you have occasion to write, as an officer of the corporation, to that firm or the members thereof for legal advice? A. Yes.

317 Q. And do they respond to your letters of inquiry? A. They do.

Q. Where do you keep that type of correspondence in your office? A. It all depends on what the question involved was.

Q. Do you segregate that correspondence from your general correspondence? A. No.

Q. It is put in with your general correspondence? A. That is right.

Q. Do you ever segregate that correspondence and put it in, for example, a vault? A. No.

Q. Do the employees of your companies have access to that correspondence?

Mr. LYNTON: I object to that, it is immaterial.

The COURT: Well, I presume this has to do with the question of whether or not it was a confidential communication.

Is that your purpose?

Mr. HOTCHKISS: Yes. It has a bearing—

Mr. LYNTON: I don't think the government is going to suggest that because officers or employees of
318 the same corporation may see confidential correspondence that any privilege is waived. You don't suggest that, do you?

Mr. HOTCHKISS: I am talking about general employees of the corporation other than officers.

Mr. LYNTON: I press the objection. I think it is wholly immaterial.

The COURT: Overruled.

By Mr. HOTCHKISS:

Q. You may answer. A. What is the question?

319 Mr. LYNTON: I have the further objection, if I may, to that question. I would like the counsel for the plaintiff to make it more definite, in the sense of what correspondence between these corporations and their counsel might be available to what employees?

Mr. HOTCHKISS: We are talking, your Honor, about the correspondence generally between the attorney and the client, and I am asking whether that correspondence generally is kept in the general files of the corporation.

Mr. LYNTON: That was not the question.

Mr. HOTCHKISS: The answer to that has been, "Yes."

Now I ask the reporter to read back the last question that I put.

(Last question read by reporter.)

By Mr. HOTCHKISS:

Q. Do the employees of your company other than the officers of the company have access to that correspondence?

Mr. LYNTON: I object to the form of the question.

The COURT: Overruled.

Mr. LYNTON: I think it is much too general.

320 The COURT: You may answer.

By the WITNESS:

A. The answer is, "No".

By Mr. HOTCHKISS:

Q. Do you have a policy in your company denying to your clerical employees access to the general files of your company?

Mr. LYNTON: Oh, I object to the form of the question. It asks for a conclusion. It is leading and suggestive.

The COURT: Sustained.

By Mr. HOTCHKISS:

Q. Have you ever issued orders to the clerical employees of your company that they may not go to the general files of your company and examine any of these letters between attorney and client?

Mr. LYNTON: I object to the form of the question. It is argumentative and suggestive.

The COURT: Overruled.

By the WITNESS:

A. I would say that they did not have access to any of those things because they were kept in locked steel cabinets that were under the jurisdiction solely of the officers,
321 if you mean correspondence between the officers and our attorneys. Those went into steel cabinets under lock and key and were only available to certain officers.

By Mr. HOTCHKISS:

Q. Is that true also of the general correspondence, that was available only to the officers?

Mr. LYNTON: Just a moment—

By the WITNESS:

A. If you mean a letter that went in regard to John Jones' claim for an automobile accident, I would say no. That went to the claim department. If it was something in regard to somebody that lost an article in a cab, that went to the lost and found department. But if it was something concerning the corporate existence or corporate contracts or corporate dealings as such which required consulting with our attorneys, those went into filing cabinets of the corporation under lock and key.

I personally had a separate vault in my own office. Mr. Bieze and the other officers had separate vaults for their correspondence.

By Mr. HOTCHKISS:

Q. And did you keep the keys to those vaults
322 and those steel cabinets? A. My secretary kept my keys.

Q. Your secretary kept your key? A. Yes.

Q. Were those cabinets kept locked during the course of the day and opened only when somebody wished to have access to the documentary material?

Mr. LYNTON: Just a moment.

By the WITNESS:

A. When I wished access to mine, that's all I know about.

Mr. LYNTON: I object to the question unless the Government is going to establish that some employees of this company actually looked at these files against the company policy as testified by this witness.

The COURT: I think the question is proper. Overruled.

Mr. HOTCHKISS: Will you repeat the last question?

The WITNESS: I answered it.

(The last question and answer were read by the reporter.)

By Mr. Hotchkiss:

323 Q. Your answer, I don't believe, is responsive to the question. I will ask it be read again.

(The same question was re-read.)

By the Witness:

A. The only file I know anything about was my own files. I don't know whether Mr. Bieze's files were opened or not. I don't inspect his files.

By Mr. Hotchkiss:

Q. What was your practice with respect to your own file? Did you keep it locked all day long? A. Yes, sir; unless we wanted to get at it.

Q. And you unlocked it only when you wanted to get to a document, is that true? A. That is correct.

Q. You kept your steel filing cabinets locked all day long? A. That is right, mine.

Q. Yours? A. That is right.

Q. What do you know about Mr. Bieze? A. Well, I know that he had a lock, and I have seen it locked and unlocked by him, but whether he kept it locked or un-

324 locked all day long or all week long, I don't know. I didn't inspect the locks every day.

Q. You have testified that these communications with your attorney were kept in these general correspondence files? A. Those that concerned corporate matters were kept in Mr. Bieze's corporate files. Now, for instance, if I can take just a moment—

Q. Did— A. If you want an answer, I will give it to you.

325 Q. Very well, proceed. A. Personally, I had charge of a certain injunction case in the last few years. That file was in my office and all the correspondence and opinions that came from Kirkland's office are in that file. I have had a number of cases that I have had active interest in. That file would be in my office.

Q. And in the same file did you keep correspondence which was not correspondence between your attorneys and yourselves? A. Certainly.

Q. You did? A. Yes.

Q. You knew Mr. Morris Markin, did you? Do you know Mr. Markin? A. I certainly do.

Q. Do you know Mr. Oakland? A. Oakland?

Q. Yes. A. Yes, sir, I do.

Q. Did you know Mr. Rank? A. I did. I do now.

Q. Did you know a Mr. Miller, R. H.? A. I certainly did.

326 Q. Did you ever permit any of those persons to examine any of the correspondence which your company had with your attorney?

Mr. LYNTON: I object to the question. We are concerned here with specific documents as to which the government is attempting to claim a waiver of privilege. What the practice may have been with respect to any other documents is of no importance whatever.

Mr. HOTCHKISS: The government wishes—

The COURT: If the inquiry is directed to the question of opinions of counsel, this is a legal opinion that is involved, is it not, an opinion by counsel?

Mr. LYNTON: Yes, that is right.

The COURT: And that was Mr. Green's letter?

Mr. LYNTON: That is right. My objection—

Mr. HOTCHKISS: We are concerned with a series of letters, your Honor.

The COURT: There were others?

Mr. HOTCHKISS: There will be a series of letters to which the same inquiry will be directed.

The COURT: If that is true then the question is proper.

327 Mr. LYNTON: Are you limiting your question to those letters as to which you are claiming a waiver of privilege?

Mr. HOTCHKISS: I am directing the question with respect to the general practice of Mr. Samuels and his company in respect to making such documents available for the examination of the persons I have mentioned.

Mr. LYNTON: Regardless of whether that availability includes these particular documents?

Mr. HOTCHKISS: For the moment.

Mr. LYNTON: I object to the question.

The COURT: Well, I think it is proper as preliminary or leading up to the specific question of these exhibits that are involved particularly; I mean the general practice of the office. He may answer.

The WITNESS: Would you read the question, please?

(Last question read by Reporter.)

The WITNESS: The general answer to that would be, "No." There were specific cases where I did exhibit cer-

tain papers to Mr. Rank when he was the acting Pres-
328 ident of Parmelee and a member of our board.

By Mr. Hotchkiss:

Q. What was your general practice if Mr. Rank asked permission to see one of those communications with your attorney?

Mr. Lynton: I object to the question as hypothetical.

By Mr. Hotchkiss:

Q. What was your general business practice?

The Court: Overruled. You may answer.

The Witness: There was no such general business practice.

By Mr. Hotchkiss:

Q. There was none at all? A. No. You asked whether there was a general business practice. I say there was none.

Mr. Hotchkiss: Read the question back.

(Last question read by the Reporter, as follows: "Q. What was your general practice if Mr. Rank asked permission to see one of those communications with your attorney? What was the general business practice?")

The Witness: I say there was no such general
329 business practice.

By Mr. Hotchkiss:

Q. If Mr. Markin requested your permission to examine any particular legal communication between yourself and attorney, what was your practice with respect to that, to deny him access to that document?

Mr. Lynton: I object.

The Court: Sustain the objection.

The court will suspend the hearing for a few moments.

The Witness: I have to catch a plane that leaves here at 12 o'clock local time, 11 o'clock plane time.

Mr. Hotchkiss: The government's examination from now on will be quite brief. It will not take very much time.

The Court: All right, proceed. If it is very brief, go ahead.

Mr. Hotchkiss: It will take I think about fifteen or twenty minutes.

The Court: I think we will suspend for about ten minutes.

The Witness: If you are going to take twenty
330 minutes, I don't see how I can make this plane. I notified the government several days ago that I would be out of town beginning 11 o'clock—

Mr. LYNTON: Do you have to leave here at 11 o'clock?
The WITNESS: Yes.
Mr. LYNTON: You will do it.
Mr. CLIMENKO: With his Honor's consent.
The COURT: I don't think this will take long.
(Intermission.)
The CLERK: Case on trial.
The COURT: Call the witness.

By Mr. HOTCHKISS:

Q. Mr. Samuels, did you receive a communication from the Antitrust Division under date of February 18th, advising you that the Division wished to inspect certain records?

Mr. LYNTON: May I suggest, if you are going to make an exhibit, that you mark the original? I have it here.

Mr. HOTCHKISS: All right.

(Said document was marked Government's Exhibit 473 for identification.)

By Mr. HOTCHKISS:

331 Q. Did you receive such a communication?

Mr. LYNTON: Are you asking about Mr. Samuels?

The WITNESS: Did I receive a communication?

By Mr. HOTCHKISS:

Q. Did you receive a communication? A. I can't answer that unless you let me see the letter.

Q. Did you receive a communication from the Antitrust Division, asking your permission to examine certain files?

Mr. LYNTON: I object to the form of the question on two grounds; first, I should like the distinction made as to whether the question is asked Mr. Samuels in his personal capacity or whether the question means the corporation, when it used the word "you." Secondly, I object to the suggestion of the contents of the document as against the best evidence.

The COURT: No, I think the question is proper. You may answer.

The WITNESS: Personally, I did not receive the letter.

By Mr. HOTCHKISS:

Q. Did you receive such letter in your capacity
332 as an officer of the company? A. No, I did not.

Q. I hand you Government's Exhibit 473 for identification. A. I have seen this letter.

Q. You have seen the letter? A. This letter, yes. This is—

Q. Under what circumstances did you first see that letter? A. This letter was delivered to the office of the Chicago Yellow Cab Company and Yellow Cab Company in my absence personally, to Mr. Bieze. Mr. Bieze showed it to me a couple of days later. I was not in the city on this date. I was in Cleveland, Ohio.

Q. This letter reads—

Mr. LYNTON: Are you offering the letter into evidence?

Mr. HOTCHKISS: I offer the letter in evidence.

The COURT: Any objection?

Mr. LYNTON: I have no objection.

The COURT: It is received.

(Said document, so offered and received in evidence, was marked Government's Exhibit 473.)

333 Mr. HOTCHKISS: The letter reads:

"Chicago Yellow Cab Co., Inc.

Attention Mr. Benjamin Samuels

Gentlemen:

"Thank you for your letter of February 13, 1946, addressed to Mr. Haddock. It will materially assist the further conduct of our investigation if you will permit the Antitrust Division:

"1. To inspect corporate records of the Chicago Yellow Cab Co., Inc. and the Yellow Cab Company showing stock ownership and transfers subsequent to January 1, 1936; * * *" and then it asks for access to certain other documents.

Q. Did you thereafter have a conversation or any conversations with representatives of the Antitrust Division with reference to making files of Yellow and Chicago Yellow available to it for examination? A. I did.

Q. What was the first time you had such an examination, such a conversation? A. My records show that Mr. Williams and I had a conference in my office just about

334 a week after that letter.

Q. Did you at that time agree to make certain files of Chicago Yellow and Yellow available to Investigators of the Antitrust Division?

Mr. LYNTON: I object to the form of that question on two grounds: It is conclusory in nature; secondly, it is certainly leading and suggestive.

The COURT: Let him ask the conversation.

By Mr. HOTCHKISS:

Q. State the conversation? A. Mr. Williams by appointment was in my office early in the—I think it is the week

about after this letter, and he introduced himself, because I did not know him. He said he was representing the Antitrust Division, that he had made an appointment with me by talking to Mr. Bieze on the day that the letter was brought in by him and delivered to Mr. Bieze.

I said, to Mr. Williams that I had seen the letter and that I was not prepared to give him any answer as to whether we would or would not allow them to inspect the records that were mentioned in the letter.

He said to me, "Well, you can decide that any way
335 you want, but I want to remind you that if you don't voluntarily give this stuff up to us we have a right to subpoena you before the grand jury."

I says, "Even though that may be so, I am not prepared to give you any answer at this time. And you did have a talk with Mr. Bieze when you were here the other day. Let's go over and see what it was that you were asking him about."

And we walked from my office together over to Mr. Bieze's office, which is on the same floor but at the other end of the building, and I told Mr. Bieze in the presence of Mr. Williams that he had asked me about whether we were ready to comply with the request in the letter which Mr. Bieze had. I did not have it. It was in Mr. Bieze's office.

Q. You had seen the letter previous to that conversation? A. I had seen it, sure. I had seen it and read it, and I said, "I just got through telling Mr. Williams we were not ready to say yes or no to his suggestion, but Mr. Williams had taken the precaution to notify me that if we
336 wouldn't do it that he would get it by subpoena before a grand jury."

Q. Did Mr. Williams at that time tell you categorically that if you did not voluntarily offer the records for his inspection he would subpoena you before a grand jury?

Mr. Lynton: I object to the form of the question. It is conclusory, it is suggestive, the witness is stating a conversation—

The Court: Sustained. He stated the conversation.

Mr. Hotchkiss: I wish to explore the conversation.

The Court: Whether or not it was categorical would be calling for a conclusion. Let him state what he said.

The Witness: As well as I can remember it, as to what took place in my office, what took place when I went with Mr. Williams into Mr. Bieze's office, there was further conversation in Mr. Bieze's office.

By Mr. Hotchkiss:

Q. Did Mr. Williams state at any time in substance that if you did not produce the documents for the examination of the Antitrust Attorneys that he would subpoena you?

337

Mr. Lynton: I object to that question. The witness has stated the conversation.

The Court: He may answer.

By the Witness:

A. That is the very distinct conclusion that I came to as a result of what Mr. Williams said to me in my office.

By Mr. Hotchkiss:

Q. On the occasion of that first visit? A. That was the first time I saw Mr. Williams in my life, so far as I know.

Q. Did you thereafter make certain records of Yellow and Chicago Yellow available to representatives of the Antitrust Division?

Mr. Lynton: I must object again. This is conclusion. I suggest that Government counsel called this witness as his own, asked the sequence of events and what happened and what was said—

Mr. Hotchkiss: Your Honor, this gentleman is an officer of a defendant corporation.

The Court: I think the question is proper. He is asking him to state whether or not it is a fact that he made records available for inspection.

338

Mr. Lynton: My objection is partly this, your Honor, that that is a conclusion, at least in my mind.

The Court: He may state what was said with reference to those records.

The Witness: There was another conference in my office. Mr. Williams and some other gentlemen, and my recollection is borne out by a memorandum which I find on my diary, which is the early part of March. I think it was the 4th of March, when Mr. Williams came back, and I told him that Mr. Bieze and I had discussed this matter thoroughly and inasmuch as we were up against the proposition of appearing before a grand jury on subpoena with these records that I saw no other course open than to let them look at the records.

By Mr. Hotchkiss:

Q. Mr. Samuels, prior to the time you had this last conversation you are just referring to, had you had any conferences with the officers of any other corporate defendants in this case? A. I had not.

Q. With respect to the matter? A. No.

339 Q. Of making records available for the inspection of the Antitrust Division officers? A. I had not.

Q. You had not? A. No. These records that Mr. Williams was talking about were Chicago Yellow Cab and Yellow Cab.

Q. You had not discussed this matter with Mr. Markin, for example? A. I did not.

Q. Had you advised Mr. Markin that you had received this letter of inquiry? A. No, I did not. This was a matter of almost daily newspaper comment at that time.

Q. You did not? A. I did not.

Q. Very well. Did certain representatives of the Antitrust Division thereafter come to your office to examine certain files? A. Yes, Mr. Williams was there on a number of days and at least two or three other men.

Q. And were they there for some considerable period of time? A. Well, that I wouldn't know, because about

340 the middle of March I stole away from town and went on a vacation.

Q. You were there part of the time? A. Yes.

Q. Then— A. I saw Mr. Williams in the office in the early part of March.

Q. Did you during the period that you were present and the Investigators were present see them go through and examine the documents in the files of your company? A. I did not, except that I remember distinctly that Mr. Williams was looking through the minute books. There were three or four minute books of various companies that we were connected with—our own, with three wholly owned subsidiaries—and he was reading those. That is the only set of books I ever saw Mr. Williams or his men working on.

Q. You have referred to certain locked steel cabinets. A. Yes.

Q. Were you advised by your fellow officers that

341 representatives of the Department of Justice were examining any records from those locked steel cabinets? A. Well, I was called in Florida about mine.

Q. You were called in Florida? A. Yes.

Q. By whom? A. By Mr. Bieze, our secretary and treasurer at that time.

Q. What was the nature of that call, the substance of the conversation? A. About getting into my vault.

Q. What instructions did you give? A. Well, I said, "I suppose the same thing applies to my files as applied to the other. If they didn't get them the way they want them, they will get us in before the grand jury on a subpoena. So," I said, "I suppose they might just as well go ahead and look at mine."

Q. During the time that you were in your offices and the Antitrust representatives were examining certain files, did you at any time refuse to turn over any files to these Investigators on your claim that the documents constituted confidential communications between attorney and client?

342 Mr. LYNTON: I object to the form of the question as conclusory. You can ask what was said in regards to that, if you wish.

The COURT: My understanding of the question is that it calls for that very thing.

Read the question.

Mr. LYNTON: If your Honor please, he talks about the letter.

The COURT: Read the question.

(Question read.)

The COURT: You may answer.

By the WITNESS:

A. Those words were never used.

By Mr. HOTCHKISS:

Q. You never used those words? A. No. It was just like the case of the cab driver sitting in his cab, and a fellow puts a gun up to his head and says, "Give me your money." They don't discuss personal privilege.

Q. I will ask you to answer the question and only the question. A. All right.

The COURT: There is no question pending.

By Mr. HOTCHKISS:

343 Q. Will you answer the question that I asked you? A. It was answered.

Q. Did you, as to any of the documents which were removed by the representatives of the Antitrust Division, assert that they were confidential communications between attorney and client?

Mr. LYNTON: I object to that on two grounds: First, as to the form; secondly, that it is repetitious.

Mr. HOTCHKISS: No, it is not repetitious.

The COURT: You may answer.

By the WITNESS:

A. That expression was never used either by them or by myself.

By Mr. HOTCHKISS:

Q. You permitted the representatives of the Department of Justice to examine the files of your office without imposing any qualifications on them?

Mr. LYNTON: I object to that. That is completely a conclusion, in my judgment, "You permitted without imposing." That is completely conclusory, I believe.

344 The COURT: Sustained.

By Mr. HOTCHKISS:

Q. Did you at any time assert the claim of privileged communications as to any of the documents which the representatives of the Antitrust Division removed from your files? A. Not in any words. It was a case of either produce—

Q. Did you or did you not? A. What?

Q. Did you or did you not? A. I say those words were never used, never discussed.

Q. Did you assert those words at any time prior to the occasion that Yellow and Chicago Yellow made certain admissions with respect to the authenticity of certain documents?

Mr. LYNTON: I object to that.

The COURT: Overruled.

By Mr. HOTCHKISS:

Q. Make the claim to the Antitrust Division? A. I personally never made any statement of any kind except in the office of the Yellow Cab Company to the representa-

345 tives of the Government, as I have already stated.

Mr. HOTCHKISS: Will you repeat the question for the witness?

Mr. LYNTON: For the witness?

Mr. HOTCHKISS: For the witness.

(Last question read by the reporter, as follows:

"Q. Did you assert those words at any time prior to the occasion that Yellow and Chicago Yellow made certain admissions with respect to the authenticity of certain documents, make the claim to the Antitrust Division?")

By the WITNESS:

A. The answer is, "No."

Mr. LYNTON: The witness answered it. Would you like to have the answer read?

The COURT: He has answered it.

Mr. HOTCHKISS: Your witness.

Mr. CLIMENKO: May we be indulged for a moment?

Mr. HOTCHKISS: Your Honor, may I ask one more ques-

The COURT: You may.

By Mr. HOTCHKISS:

346 Q. Mr. Samuels, did any of your fellow officers to your knowledge refuse to permit Investigators of the Antitrust Division to examine certain documents or any documents on the ground that such documents were confidential communications between attorney and client? A. There are only two officers there.

Q. Those two officers, did they or did they not, to your knowledge? A. Not in my presence.

Q. To your knowledge? A. I know of no conversation except—

Q. To your knowledge? To your knowledge? A. To my knowledge, no.

Q. And did you give either of those officers instructions to assert such a claim of privilege as to any documents? Did you or did you not? Yes or no. A. That question was never discussed by me.

Q. Yes or no. A. With the officers at all.

Mr. HOTCHKISS: Very well.

347 Cross Examination.

By Mr. LYNTON:

Q. Mr. Samuels, did you at any time during the course of this investigation by the government intend to waive any privileges that were available to Chicago Yellow or Yellow? A. I certainly did not.

Q. Did you at all times during this investigation act under the impact of the statements made with respect to subpoena and grand jury? A. That is the only compelling factor in the case.

Q. Were the documents which actually were inspected by the government voluminous? A. I would say so. There were over eleven thousand exhibits, as near as I can recall, that were taken.

Q. Did the government actually examine more than those exhibits that were taken? A. I would say probably ten times that many.

Mr. LYNTON: I have no further questions.

The COURT: Any further questions?

348 Redirect Examination.

By Mr. HOTCHKISS:

Q. Mr. Samuels, are you an attorney? A. I am.

Mr. HOTCHKISS: That is all.

Recross Examination.

By Mr. LYNTON:

Q. Mr. Samuels, when have you last actively practiced? A. 1918.

Q. Do you consider yourself an expert in connection with Antitrust matters? A. I never had anything to do with any, except this one.

Mr. HOTCHKISS: Objection.

The COURT: Overruled.

By Mr. LYNTON:

Q. Did you have any legal knowledge at the time of the investigation by the government of any of the technical aspects of their rights of investigation? A. Absolutely not.

349 Q. Or of their rights of investigation before a grand jury? A. No, sir.

Q. Or of their rights with respect to the issuance of a subpoena? A. No.

Mr. LYNTON: That is all.

Redirect Examination.

By Mr. HOTCHKISS:

Q. Mr. Samuels, were you aware of the fact that you could have denied to the government attorneys any access to your files? A. No, I wasn't aware of that. I assumed that if the government wanted to get our files, all they had to do was call the grand jury, have a subpoena issued, compel us to produce everything that we had in our possession. That was my general understanding.

Q. Mr. Samuels, were you aware of the fact that you could have advised Mr. Williams and his associates that they could not come into your office to examine your files?

Mr. LYNTON: I object to the question. It is identi-

350 cal with the previous question which has been answered. It is also faulty in form.

The COURT: It calls for a legal opinion, too, doesn't it?

Mr. LYNTON: I think so.

The COURT: Sustain the objection.

By Mr. HOTCHKISS:

Q. Mr. Samuels, were you afraid of a grand jury investigation?

Mr. LYNTON: I object to that word "afraid."
The COURT: Sustained.

By Mr. HOTCHKISS:

Q. Was the only motivating factor in your mind on permitting government attorneys to examine your files the fact that you did not want a grand jury investigation? A. The only motivating factor in this case was practically this: "You either let us have access to your files, or else." Now, that is putting it as simply as I can, and "or else" meant a lot to me. After all, I was the president of the company, and vice president of the other company.

Q. And you, as the officer of these companies, did not desire to have a grand jury subpoena *duces tecum* directed at your company for the files?

351 Mr. LYNTON: I object to that. I don't think that is pertinent.

The COURT: He may answer that.
The WITNESS: I certainly did not.

By Mr. HOTCHKISS:

Q. You would prefer to make the files available voluntarily without subpoena?

Mr. LYNTON: I object to that.
The WITNESS: No, it was not voluntary.
Mr. LYNTON: Pardon me. I object to that as being conclusory in nature.

By Mr. HOTCHKISS:

Q. You would prefer then to make the files available without subpoena directed at you?

Mr. LYNTON: I object to that. I think this thing has been explored.
The COURT: I think the facts speak for themselves. Sustain the objection.
Mr. HOTCHKISS: That is all.
Mr. LYNTON: That is all.
The WITNESS: Thank you, your Honor.
(Witness excused.)
The COURT: The court will recess for ten minutes.
(Recess taken.)

352 Mr. HOTCHKISS: Mr. Mann, as a witness.

JAMES EDWARD MANN, called as a witness herein on behalf of the government, having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. HOTCHKISS:

Q. Will you state your name, please? A. James Edward Mann.

Q. Your address? A. 641 East 83rd Place.

Q. What is your occupation? A. I am an attorney with the Antitrust Division of the Department of Justice.

Q. What was your occupation in 1946? A. The first part of 1946, I was still in the Navy, but on March 1, 1946 I returned to the Antitrust Division. I took up the position I have now with the department.

Q. After your return about March 1, 1946, were you assigned to make any investigations in connection with an investigation of the taxicab industry? A. Yes. On

353 March 4, 1946 I went out to the Yellow Cab Company. Their main office is located on the South Side of Chicago at, I think it is, 21st Street, and I asked for—

Q. What were your instructions in going out there? A. I had been informed by Mr. Williams that arrangement had been made for me and Mr. Balthis to contact Mr. Bieze of the Yellow Cab Company, and we were to inform him that we wanted to look over his files and to look over his minute books of the Yellow Cab Company and the Chicago Yellow Cab Company.

Q. Did you meet Mr. Bieze? A. Yes, I met Mr. Bieze on March 4th.

Q. And what conversation did you have with him at the time you met? A. I told Mr. Bieze what we desired to do, that we wished to— .

Q. Will you state in substance what you told him? A. I told Mr. Bieze that we would like to have a room so that we could examine the files and the minute books of the Yellow Cab Company.

354 Mr. Bieze told me that he would be glad to cooperate with Mr. Balthis and myself and that they would make their files and their minute books available to us.

Q. Did you find out while you were there what Mr. Bieze's official position with the Yellow Cab Company and Chicago Yellow was?

Mr. LYNTON: Do you mean, did he ask Mr. Bieze?

By Mr. HOTCHKISS:

Q. Did you ascertain from Mr. Bieze what his official position with the Yellow Cab Company was?

Mr. LYNTON: I object to the form of the question. Are you asking, did he ask Mr. Bieze?

By Mr. HOTCHKISS:

Q. Did you ascertain from Mr. Bieze—

Mr. LYNTON: I object to the question.

The COURT: He may answer.

Mr. LYNTON: I think it is a matter of mental operation, if your Honor please, and this is a government witness. I have no objection to the conversation.

The COURT: He should state what he said. What did Mr. Bieze say and what did you say?

The WITNESS: I do not recall whether I asked Mr.
355 Bieze if he was vice president or an officer of the company, or not; I asked the girl at the desk, though, that I wanted to talk to an officer of the company, and I was directed to Mr. Bieze.

By Mr. HOTCHKISS:

Q. Now, did Mr. Bieze make the files available to you?

Mr. LYNTON: I object to that. It is a conclusion.

The COURT: Sustained. State what was said and done.

The WITNESS: I asked Mr. Bieze for the files and the minute books, and Mr. Bieze said that he would be glad to cooperate with me and that he would turn over the files that they had and also the minute books, and if there were any documents we wanted that were back, old documents, that they would go to the warehouse and get them for us. Mr. Bieze told me at that time that he wanted to cooperate with me in every way possible and other occasions he also made the same statement, and he inquired about whether or not he was fully cooperating with me.

356 Mr. LYNTON: You are speaking now about other occasions?

The WITNESS: I am speaking of the particular occasion when I first met Mr. Bieze, and he repeated that same statement other times.

By Mr. HOTCHKISS:

Q. Did you then examine the files? A. I did. Mr. Balthis and myself on the first two days that we were there, examined the minute books and files of the company.

Q. Where was this examination conducted? A. It was conducted in Mr. Hogan's office. Mr. Hogan was out of town, and we were given his office to use.

Q. Would you state the procedure that was followed in examining these files and how you got the particular files? A. On the first day Mr. Bieze showed us the location of the files, and he gave us permission to go to the files, open the files and take out the folders and to go through those folders and take out the documents we desired.

Q. And you did remove folders from those files? A. That is right. We did.

357 Q. Did you observe any steel filing cabinets? A. Yes, we did. Yes, I did.

Q. Were any of those cabinets locked while you were there? A. I don't remember.

Q. Did you remove any documents from those steel filing cabinets? A. Yes, I did.

Q. And did you examine those documents? A. Each folder was taken out of the file cabinet and taken over to Mr. Hogan's desk, and we would go through the folder, sheet by sheet, reading, determining whether or not we wanted the document. All documents that we wanted from those files we took out and placed in a pile. The file with the remaining documents was placed back in the file in the steel cabinet.

Q. And then what did you do with those documents which you removed from the files? A. After a number of documents had been accumulated in this pile, Mr. Balthis and myself or Mr. Hayden, who also came down there to assist us, would place a number on the document, a No. 10, which represented in our system, Yellow Cab Com-

358 pany, and then 1, 2, 3, 4, 5, the number of the document we had pulled from the files, and then either my initials would be placed on the document, Mr. Balthis' initials or Mr. Hayden's initials would be placed on it. We would then record on a separate sheet of paper the date of the document. If it was correspondence we would say, for example, "Mr. Hogan to Mr. Markin," and then the number of the document we had placed on it and our initials.

Q. Did Mr. Bieze examine the documents which you had removed?

Mr. Lynton: Do you mean while this man was present?

By Mr. Hotchkiss:

Q. While you were present. I am asking as to your own observation and in your presence, of course. A. In my presence, I saw Mr. Bieze look at some of the documents.

Q. At the end of a day, what would you do with those documents that you had removed?

Mr. Lyxton: I object to this. I think this is beyond the scope of the inquiry that we are now embarked on. I
359 am not interested and I don't think it is pertinent, as to what the government may have done.

Mr. Horchkiss: No. It is very highly pertinent, your Honor. We want to ascertain the general procedure that was followed in removing these documents from the files, and then what was done with those documents after they were pulled out of the files.

We have established that up to this point the representative of the government went in with the permission of an officer of the company to examine the files, the files were examined, Mr. Mann and the other representatives had free access to the filing cabinets, could remove the folders that were there, did remove those folders, did remove documents from those folders, an officer of the company did see those documents.

Now, we want to know what he did with those documents at the end of the day. It may be a somewhat detailed analysis of what transpired, but I think it is material.

Mr. Lyxton: Of course, we do not agree with your suggestion that it was by permission, except under the
360 circumstances narrated by Mr. Samuels. However, I think, if your Honor please, that the only question before us at this time is whether an officer of Chicago Yellow waived the privilege which Chicago Yellow had, and whether an officer of Yellow waived the privilege which Yellow had. What the government did after it proceeded upon its inspection of these documents seems to me beyond the question.

The Court: It seems immaterial what the government did afterwards. I think the question here for the court to determine and the inquiry you are now pursuing is as to whether or not they were obtained voluntarily, whether they were privileged communications. So the manner in which they were obtained is the crucial question, and not what took place afterwards. In other words, were they given up voluntarily and, if so, by this act did the defendants waive the privilege? That is the test, that is the question. After they were once obtained, details of what the government did with them afterwards appears to me to be immaterial.

Mr. Horchkiss: Your Honor, I simply point out the fact that at the present stage of the testimony

361 there are certain documents on a table in the office of Yellow and Chicago Yellow which the government has removed from a folder. The government has not taken them away. The government does not have possession of them. They are still at that stage in the possession of Yellow.

The COURT: As to whether or not they were removed—

Mr. HOTCHKISS: What happened at the end of the day with those documents that had been removed—

The COURT: Generally, that is proper. But the details should be avoided, because they are immaterial.

Mr. HOTCHKISS: This is as far as I wish to go at this time.

The COURT: You may answer the question.

The WITNESS: Will the reporter read the question, please?

(Last question read by reporter.)

The WITNESS: At the end of each day the documents that we had removed from the files of the Yellow Cab Company were left on Mr. Hogan's desk.

By Mr. HOTCHKISS:

362 Q. Were those documents ever turned over to you for removal from the offices of Yellow?

Mr. LYNTON: I object to that as immaterial.

The COURT: He may answer.

The WITNESS: We never, we did not remove any documents from the Yellow Cab Company. They were eventually—

Mr. LYNTON: I think the witness has answered the question. He said, "No."

By Mr. HOTCHKISS:

Q. Were any copies or photostats made of such documents and made available to the government?

Mr. LYNTON: I object. I think he has gone beyond the question that is material here.

The COURT: I think it is immaterial here. Sustained.

By Mr. HOTCHKISS:

Q. While you were in the offices of the Yellow Cab Company, did you have any conversations with Mr. Bieze concerning the subject of confidential communications between attorney and client? A. No.

Q. Mr. Bieze never raised that? A. Mr. Bieze—

363 Mr. LYNTON: Just a moment. I object to that. The question has been asked, it has been answered, and now it is a leading question.

The COURT: Sustained.

By Mr. Hotchkiss:

Q. Did you ever have any conversation with Mr. Samuels on the subject of confidential communications between attorney and client?

Mr. Lynton: May I ask a preliminary question, whether the witness ever had any conversations with Mr. Samuels during the course of this investigation?

The Witness: Yes, I did.

Mr. Lynton: Would you fix the date?

The Witness: I had a conversation with Mr. Samuels either the first or second day that I was at the Yellow Cab Company. That would be either March 4th or 5th. On those occasions Mr. Samuels never brought up the question of privileged documents.

By Mr. Hotchkiss:

Q. Did you, while you were there, meet any person who was introduced to you as an attorney of Yellow or
364 Chicago Yellow? A. Yes, while I was there I was introduced, or I talked to Mr. Hodson; Mr. Hodson of the firm of Kirkland, Fleming came to the Yellow Cab offices while I was working there. He looked over the documents.

Mr. Lynton: He is going beyond the question now.

The Witness: I met Mr. Hodson at the Yellow Cab offices.

By Mr. Hotchkiss:

Q. And did you have any conversations with Mr. Hodson concerning the subject of confidential communications between attorney and client?

Mr. Lynton: Preliminarily, would you fix the time?

By Mr. Hotchkiss:

Q. At any time during the course of your stay at the Yellow and Chicago Yellow offices?

Mr. Lynton: I object to the question unless we ascertain first when it was that this witness met Mr. Hodson.

The Court: Sustained.

By Mr. Hotchkiss:

365 Q. When did you meet Mr. Hodson? A. I met Mr. Hodson either at one of two times. That would be in the first period when I was at the Yellow Cab Company, which was March 4th, 5th and part of the 6th, and sometime the latter part of March. I met Mr. Hodson either of those—

Q. Where did you meet him? A. In the offices of the Yellow Cab Company, in Mr. Hogan's office.

Q. On either of those occasions, did you have any conversation with Mr. Hodson? A. Yes.

Q. Concerning the question of privileged communications between attorney and client? A. The subject of confidential communications between attorney and client was not discussed with Mr. Hodson.

Q. Mr. Mann, did you go to Kalamazoo, Michigan in connection with this general investigation of the taxicab industry?

Mr. Lyston: Unless this is tied to the question of Yellow and Chicago Yellow, I suggest that it might be a little out of order at this time.

Mr. Hotchkiss: May it please the court, I think counsel does have a point, and I beg his indulgence
366 and the indulgence of the court, for this reason: There are subsequently in the series of documents which the government will offer in evidence certain documents concerning which either Markin or the Checker Cab Manufacturing Company assert this claim of privilege as arising out of attorney-client relationship. I wish at this time to rather anticipate this question.

I might advise the court and counsel that Mr. Mann did go to the Checker Cab Manufacturing Company, and I wish to ascertain from him the facts concerning these issues which will be raised.

367 Mr. Lyston: I am compelled to object to that procedure for these reasons:

First, I understood, from our informal discussion after court, that we were confining ourselves to Yellow and Chicago Yellow, and as a matter of our procedure we would stand on this with respect to all defendants.

Secondly, I have not made any attempt since the question was raised at yesterday's session to communicate with those persons who might have any knowledge on this point at CCM, and I think that we will be ill prepared to consider cross examination of this witness on that aspect.

Mr. Hotchkiss: Your Honor, in view of the statement that has been made by counsel, I withdraw the question.

The Court: Very well.

Mr. Hotchkiss: Your witness.

Cross Examination.

By Mr. Lyston:

Q. Mr. Mann, you have testified that it was not until March 4, 1946, that you first went to the offices of

368 Chicago Yellow and Yellow, is that correct? A. That is correct.

Q. When did you actually arrive in Chicago after your tour of duty in the Navy? A. My terminal leave ended, let's see—I got back from Guam on November 4th. I left Guam November 4th—

Q. When did you get— A. I will give you the whole story.

Q. I don't want the whole story. I want the date when you arrived in Chicago. A. I think it would be the day after Thanksgiving. That would be in 1945.

Q. And did you stay in Chicago between that time and March 4th? A. Yes, that is right.

Q. But you did not embark on any investigation with respect to the records of Yellow or Chicago Yellow until March 4th, is that correct? A. That is right.

Q. Were you aware on March 4th there had been previous conversations between Mr. Samuels and Mr. Williams? A. I knew there had been a previous conver-
369 sation between Mr. Williams and Mr. Bieze, not Mr. Samuels, I don't believe.

Q. The answer to my question is, "No"? A. "No."

Q. When you looked at these records in Mr. Hogan's office, was there any officer of the corporation continuously present? A. Mr. Bieze's office is right next to Mr. Hogan's, and there is a door in between. Mr. Bieze could see us any time he was in his office. He was most likely in his office fifty percent of the time, so that we would be under his supervision fifty percent of the time.

Q. Would you say that you had been under his supervision, that is your conclusion from the juxtaposition of the offices, is that right? A. Yes.

Q. My question was whether any officer of the company was present continuously in Mr. Hogan's office while you were there? Was he? A. No officer of Yellow or Chicago Yellow was continuously in the office while I was there.

Q. Did an officer occasionally come into the office?
370 A. Yes, they came in there quite often.

Q. But for the greater duration of the period when you were there they did not come into Mr. Hogan's office, isn't that right? A. If you consider the fact that there is an open door—

Q. I will come to that. Can't you answer that question? A. I have answered the question already, as far as I am concerned.

Mr. LYNTON: I suggest that the witness be directed to answer.

The COURT: Listen to the question, Mr. Witness. Read it. (Question read.)

By the WITNESS:

A. That is correct.

By Mr. LYNTON:

Q. You could see Mr. Bieze from Mr. Hogan's office, couldn't you? A. That is right.

Q. Was Mr. Bieze watching you when he was in his office? A. I don't know.

371 Mr. HOTCHKISS: I am afraid I must object to further inquiry along this line. I do not think it is material or relevant to the issues of the question which is raised here, whether an officer of the company can see or could see this witness during the period of time that he was examining documents. The testimony has disclosed that he is in those offices with the permission of the officers, that the documentary material that he has removed from the files which those officers permitted him to have access to were placed on the table, and the officers knew of it or certainly had the opportunity of knowing what he removed.

The COURT: The question is improper for the reason that this witness would not know whether another person was watching him or not.

But the inquiry is proper as bearing on the question of whether or not the officers consent voluntarily to the inspection of the documents.

Objection sustained.

Mr. LYNTON: I withdraw the question.

372 Q. Did you see Mr. Bieze watching you while you were in Mr. Hogan's room? A. I can't answer that question.

Q. You don't know? A. I don't know. I don't recollect whether he did or did not look at me all the time he was in his room and I was in Mr. Hogan's room.

Q. You don't mean to testify that conceivably he might have looked at you all the time, do you? A. I say I do not recollect that he did or did not. I have no recollection on the point.

Q. Isn't your recollection distinct that you did not see him continuously watching you? A. I couldn't see him continuously watching me.

Q. Your recollection is distinct on that, isn't it? A. I say I couldn't have seen him continuously looking at me.

Q. Why? A. Because I was looking at the papers.

Q. You did not observe him then? A. I did not observe him continuously looking at me.

373 Q. Did you see him go out of his office from time to time? A. Yes.

Q. Did you ever bring up the question of privilege in any discussion with Mr. Samuels? A. No.

Q. Did you in any discussion with Mr. Bieze? A. No.

Q. Did you in any discussion with Mr. Hodson? A. No, I did not.

Q. When you were instructed by Mr. Williams to go to the office of Yellow and Chicago Yellow on March 4, 1946, did he tell you to see Mr. Bieze? A. I am not positive whether he told me to see Mr. Bieze or not. My best recollection would be that he did tell me to see Mr. Bieze.

Q. But when you actually went to the offices of Yellow and Chicago Yellow, you merely went to a girl and asked her to see some officer, is that right? A. I may have asked for Mr. Bieze or I may have asked for an officer. I am not sure.

Q. You testified on direct examination that you asked to see some officer. What is your present recollec-

374 tion? A. I may have asked that or I may have asked to see Mr. Bieze personally. I may have mentioned him by name, I may have asked to see an officer of the company.

Q. You are now testifying you have no recollection on the point? A. I have a recollection that I did either one or the other, one or the other of the two things.

Q. But you don't know which? A. No. I am just sure that I did one or the other.

Mr. Lynton: That is all.

The Court: Any other questions?

Mr. Hotchkiss: No questions.

The Court: You are excused.

(Witness excused.)

(Jers in Evidence

Mr. Hotchkiss: Your Honor, at this time I offer in evidence Government's Exhibit 25.

Mr. Lynton: May I pause a moment to identify that one?

Mr. Hotchkiss: May it please the Court, during the testimony this morning what appears to the Government to be a collateral issue has arisen, and that is whether

375 there was a certain degree of duress imposed on the officers of Yellow and Chicago Yellow. We feel that that question is irrelevant and wish at this time to proceed on that basis. If, however, the Court feels that there is

some relevance to the argument, then the Government wishes to put on the stand as its witness Mr. Melville C. Williams, concerning whom Mr. Samuels has testified as to certain conversations.

I must confess at the moment, your Honor, a certain reluctance to putting Mr. Williams on the stand, solely because of the fact that he is counsel of record in the case. However, if it is desirable and in view of the fact that this is a rather collateral question, I think it would be perfectly proper to put him on the stand.

Mr. LYNTON: I should just like to understand. Are you making an offer of proposed Exhibit 25 on the basis of the present testimony?

Mr. HOTCHKISS: On the basis of the present testimony.

Mr. LYNTON: And that is the question before us right now?

Mr. HOTCHKISS: That is the question before us right now.

376 Mr. LYNTON: I object to the offer on the ground that proposed Exhibit 25 is incompetent; that it is a confidential communication, and I specify in support of that, that there has been no showing that the privilege which is possessed by Chicago Yellow and Yellow has been waived, and I further specify that it appears that the inspection by the government was an inspection of a voluminous mass of documents without any adversion to any particular document; therefore, that it is a mass inspection and not an inspection of any document as to which a privilege might be claimed.

Also, and purely for the sake of the record, I renew the objections previously made with respect to all defendants other than Chicago Yellow and Yellow on the ground that this document is not binding, and I further object to its admission on the basis of irrelevancy and immateriality.

Mr. HOTCHKISS: Your Honor, this rule as to privileged communications between attorney and client is, of course, an ancient rule. But it is a rule which has at all times been very strictly construed and limited by the courts. The reason for the fact that the courts have so strictly construed this rule is that the doctrine of

377 privileged communications between attorney and client is a doctrine which prevents the full disclosure of the truth, and the law frowns upon a liberal application of any doctrine or any principle of law which prevents the full disclosure of the truth.

The privilege is, of course, a privilege for the client to assert; also, the privilege is one for the client to waive, and it is elementary in the law applying to the principle of confidential communications between attorney and client that the privilege is lost where any communication is disclosed to some third person.

The government contends that in this case, assuming that these documents are privileged or were at one time privileged, assuming that for the sake of the argument, that certainly that privilege has been waived and lost by the client, in this case the Yellow Cab Company and the Chicago Yellow Cab Company.

The evidence shows that representatives of the Department of Justice approached authorized officers of Yellow and Chicago Yellow and requested of them permission to examine the files of those companies in connection
378 with an investigation of possible restraints of trade and monopolies in the taxicab industry. At that point it is clear that the officers could have said, "We will not permit you to have access to the files," and that it would have been perfectly proper for them to do so. At that point if they had so acted, the government then would have had the privilege if it so desired, and if it secured the approval of the Attorney General, of instituting grand jury proceedings, and under those grand jury proceedings issuing subpoena *duces tecum* calling for the production of documentary material.

Now, if the government had subpoenaed documents within the category of these documents as to which the objection is here directed and if the Yellow Cab Company had produced the documents under subpoena without raising their claim of privilege at that time I think it is quite possible that the court would hold that the privilege had been lost.

But, nevertheless, here in this case Yellow and Chicago Yellow permitted investigators of the Department of Justice to go into the files, remove documents from the files, and Mr. Samuels himself states and admits that he
379 did not assert the claim of privilege, did not withhold any documents from the inspection of the government investigators on the ground that the document was a privileged communication between attorney and client.

Mr. Mann has testified that he went in there and there was never any such claims asserted. In other words, at the time the government made its examination of the files

of Yellow and Chicago Yellow those companies had determined, after having received written communications from the government asking to examine its files, that they would permit investigators to go in. They imposed no limitations with respect to confidential communications. Those communications were apparently in the general files which were examined by the investigators. They were not segregated from the other files. There is no showing certainly from the testimony now before the court that there was any attempt made to keep these documents segregated from other general correspondence. Defendants Yellow and Chicago Yellow, having turned over these documents to the investigators for the government without ever asserting any claim of privilege and ever asserting such a
380 claim until nearly two years later, the government asked for admissions on authenticity, then the question is raised, and I submit certainly, your Honor, that the defendant has lost any right to claim the privilege.

The Court: Do you wish to reply?

Mr. Lyston: The sole question is whether or not these documents were inspected by the government under voluntary circumstances so far as Yellow or Chicago Yellow is concerned or whether these documents were obtained under a threat of compulsion. On that issue the government has the burden of proof because the privilege exists unless it is affirmatively demonstrated that it has been waived.

Waiver not only indicates an intention. There is no testimony here other than Mr. Samuels' with respect to the circumstances under which these documents were made accessible to the government. His testimony we think is beyond any question that the turnover was made under the impact of a threat of subpoena with the consequent institution of a grand jury investigation.

381 Some of the argumentation of the government before you on this question also touches collaterally the question of search and seizure under the Fourth Amendment. I mention that only because there is a question of mass of documents here, and recent Supreme Court cases have held that when the government even under lawful authority of a search warrant goes into a place for one apparent purpose but extends its search beyond the purview and obtains other documents, that it is a violation of constitutional rights.

I suggest that only because we have had as a secondary argument the question that there was no waiver, not only because the surrender was under compulsion, but because

there was no direction pointed toward any particular documents as distinguished from a general mass of files.

The COURT: Do you wish to add anything?

Mr. HOTCHKISS: Just one point, your Honor, on this matter of mass of files. It is obvious that if the defendants Yellow and Chicago Yellow felt that they desired to maintain these communications with their attorney in a confidential status they could have seen to that by put-
382 ting those documents in separate files rather than in their general files. As it was, they turned them over to government investigators, and they had the full opportunity of examining all of these records which were secured and which were photostated and turned over to the government.

The COURT: The court construes the testimony of Mr. Samuels to mean that while in the first instance they did not wish to accede to the government's request to inspect these documents, that on information he decided to let them go ahead, and it seems to me that the privilege was waived, from the very testimony of Mr. Samuels. He could have asserted the privilege and these would not have been admissible had he told the government, "Now, there are certain documents here that are in the nature of privileged communications, and as to those we will make an exception."

The defense raises a question of compulsion. I don't think that the attitude of the government in this case amounted to compulsion, even admitting Mr. Williams had told them that if they were not allowed to see them that they would obtain them and inspect them by way of
383 subpoena before the grand jury.

I do not think that amounts to compulsion. I think that, as I remember the testimony of Mr. Samuels, he wanted time to consider after they first made the demand. I think that is correct. And on information he decided to allow the government to inspect them. I think under all the circumstances here the privilege was waived. So the court will receive in evidence Exhibit 25.

Mr. CLIMENKO: If your Honor please, may I be heard briefly on this question? I know your Honor has ruled and I certainly do not mean to attempt to evade it.

The COURT: Yes. If there is something new you can add that has not been stated, you may.

Mr. CLIMENKO: It was only this consideration, if the Court please: As I understand the development of the testimony on the subject, it went about in this fashion:

Mr. Samuels was told by a government representative that they wanted these documents. He said that he was also told that if the government did not get them a subpoena would issue. That would be a grand jury subpoena.

384 The importance of that, if the Court please, is only this, but it goes to the crux of the question of voluntariness, because I think the waiver question depends upon voluntariness, and this is its significance. That a grand jury subpoena necessarily employed initiation of a criminal proceeding so that when the witness says that what operates on his mind and that he arrives at his decision under the impact of the announcement of the issuance of a grand jury subpoena, he understands and the government representative who speaks to him at the time understands—although they are using covert language in the matter—nevertheless, they both understand the point, and that is that unless these papers are given over the government will resort to procedure which involves initiation of a criminal prosecution, and it is under those circumstances, if the Court please, that the consent is given, and the consent which is thus extorted is a general consent without let or restraint to deliberate on any particular matter, and thus the extent of the consent is an index of the extent of the duress. In other words, "Since you suggest that if we don't give you our papers you will prosecute us

385 criminally, we have no alternative but to give you all of our papers and not to pause to consider what they are", which is precisely what the testimony reveals.

If your Honor please, I say all of this with a great feeling of restraint because your Honor has ruled; but I thought that in justice to our position I should like the record to convey precisely what our point was.

The Court: It is perfectly proper for you to state your views for the record.

Mr. Climenko: Thank you, Sir.

The Court: I am of the same opinion now, that Mr. Samuels yielded reluctantly, but not through compulsion.

Proceed.

Mr. Hotchkiss: The government has offered Government's Exhibit 25.

The Court: It is received in evidence.

Mr. Lynton: I think, again, for the purpose of the record, the court has ruled upon the first objection, namely, that of privilege asserted by Yellow and Chicago Yellow. The other objections with respect to the other defendants,

namely, that it is not a document binding on them, passing between Yellow and Chicago Yellow on the one side
386 and its counsel on the other side, who are not asserted by the government to be parties to this conspiracy, still remains for ruling, as does the final objection—

The COURT: My ruling will be the same as on the previous objections, and that is that at this stage it is difficult for the court to anticipate whether or not it will be connected up and made material and competent so far as the other defendants are concerned, and the court is receiving it subject to that standing objection and subject to a ruling at the conclusion of the government's evidence as to whether it was connected up and made material.

Mr. LYNTON: I wonder if I may pursue this just this much further—

The COURT: You may. You may as well settle it now because it will arise again.

Mr. LYNTON: To ask the government whether it is going to use this document as against any defendant other than Yellow and Chicago Yellow in the sense that it was shown to some such other defendant or discussed with some such other defendant? If not, then I would submit that there is no possibility of the government connecting
387 it, and I think that is the case.

Mr. HOTCHKISS: Your Honor, I get back to the point again that this is a conspiracy case, and it has never been the contention of the government with respect to any single one of the documents which it is offering in evidence that as to any single one of those documents the person who wrote that document then took it around to show to all of the other defendants. The law as to conspiracy and the law as to the declarations of co-conspirators and agents and representatives in conspiracies does not, as I read it, require the government to carry any such burden.

Mr. LYNTON: I think the government has in effect admitted that it will never connect this document with the defendants.

Mr. HOTCHKISS: It does not claim it was shown to any other defendant. It does not claim that it was shown to any other defendant. All it has to do is to show, on ultimate connection, that there was a conspiracy; that these defendants were parties to the conspiracy, and this document was a document in this case prepared by an agent of one of the defendants in—

The COURT: That is on the theory that one co-
388 conspirator is responsible for the acts of all?

Mr. HOTCHKISS: Certainly.

Mr. LYNTON: If this is in furtherance of the conspiracy—

The COURT: Yes.

Mr. LYNTON: And the government has admitted by its statement that this particular document was not used in furtherance of any conspiracy—

The COURT: No. I think my ruling is sound and should stand.

(Said document, so offered and received in evidence, was marked Government's Exhibit 25.)

Mr. HOTCHKISS: I read Government's Exhibit 25:

"There will be submitted for your consideration today the matter of extending for a period of three years the so-called Management Contract, whereby, for a fee of $50,000 per annum, Parmelee Transportation Company has agreed to furnish you and your subsidiary companies with managerial and operating advice and assistance. We have been requested by your President to prepare the extension agreement and
389 the resolutions pertaining to the authorization of its execution."

I omit the next paragraph and proceed on:

"In our opinion, your Board has the legal right and power to authorize the engagement of such experts, counsel and agencies as you may think necessary or advisable in the conduct of your business. The principal question for your consideration is whether or not the contemplated engagement is necessary or advisable in the transaction of your business, the fairness of the compensation in the light of the services to be rendered by Parmelee Transportation Company and the benefits to be derived by you and your subsidiaries from such services. These questions are matters of business judgment in the consideration of which you have the benefit of your experience during the past three years under the contract now expiring. We are not sufficiently familiar with that experience to warrant us in assuming any responsibility in reaching a decision.

"It is especially important that the questions to
396 which we refer be given particular consideration in view of the fact that Parmelee Transportation Company, as we are informed, is your largest stockholder outside of The Waverly Corporation, and the Presi-

dent of Parmelee Transportation Company is one of your directors. This relationship will undoubtedly invite careful scrutiny of any Court or Commission which may have occasion to pass upon the transaction and therefore should prompt you to exercise the utmost caution in reaching your conclusion."

391 I now offer Government's Exhibit No. 27. I renew my offer made on page 176. This is the exhibit about which the attorney-and-client privilege was advanced.

The COURT: Well, the same objections were raised to 27 as to 25.

Mr. LYNTON: That is correct, your Honor.

The COURT: Same ruling.

Mr. LYNTON: The objection will simply be noted for the record?

The COURT: Yes, let the record so show.

(Said document, so offered and received in evidence, was marked Government's Exhibit 27.)

Mr. HOTCHKISS: This is a letter from C. L. Passolt, Treasurer of Parmelee, to C. P. G. Fuller. It simply outlines a series of management contracts which have been entered into from time to time.

Now, turning to Government's Exhibit No. 88, on page 148; that is where we left off yesterday.

The COURT: What page is that on?

Mr. HOTCHKISS: That is page 148, your Honor, of the excerpts, towards the bottom of the page.

392 I offer Government's Exhibit No. 88, which consists of the minutes of directors' meeting of Checker Cab Company held February 5, 1930.

(Said document, so offered and received in evidence, was marked Government's Exhibit 88.)

Mr. HOTCHKISS: I turn to the top of page 149, the first paragraph at the top.

"Whereupon, Daniel M. Healy, General Counsel for the Company presented a proposed contract between this Company and Checker Cab Manufacturing Corporation, a New Jersey Corporation, and Cab Sales and Parts Corporation, a Delaware Corporation, in words and figures as follows:

"THIS AGREEMENT, made and entered into by and between Checker Cab Manufacturing Corporation,"—

I won't read it.

The parties to the agreement being Checker Cab Manufacturing Company, Checker Taxi Company and Cab Sales and Parts Corporation.

And then proceeds:

"WITNESSETH: That WHEREAS, M. Co.—"

Which is identified as the Checker Cab Manufac-
393 turing Company in the proceeding.

"—is in the business of manufacturing and selling Checker taxicabs and did heretofore on the 24th day of February, A. D. 1925, enter into a contract in writing to dispose of litigation pending between M. Co., *et al.*, and the Taxi Co., and providing for the purchase of cabs by the Taxi Co. or its stockholders and drivers from the M. Co.: and

"WHEREAS, thereafter, in connection with the settlement of said litigation pending between Taxi Co. and the M. Co., *et al.*, a decree fixing the status of the parties in respect to the rights—"

Then it discusses the various aspects of the decree.

Mr. LYNTON: Will you read the next phrase, with respect to rights?

Mr. HOTCHKISS: Very well.

"—in respect to the rights and use of the Checker border and monogram—"

Mr. LYNTON: That is all.

Mr. HOTCHKISS:

"—was duly entered in the Superior Court of Cook
394 County, Case No. 386030; that thereafter Taxi Co. did file a bill of review in the Superior Court of Cook County, Case No. 421997, seeking to vacate, review and impeach said decree so filed as aforesaid, alleging, among other things, that the entry of said decree was not authorized by the Board of Directors of Taxi Co., and subsequently alleging that said settlement and the entry of said decree was procured by fraud, which charge was denied by M. Co.: and

"WHEREAS, M. Co. did file a bill for an accounting against the Taxi Co., in the United States District Court in the Northern District of Illinois, Eastern Division, Case No. 7726, seeking to recover damages for breach of said contract, of February 24th, 1925 and Taxi Co. defendant said suit on the ground, among other things, that said contract was procured by fraud; that said charge was denied by M. Co. and said cause was thereupon referred to Thomas J. Peden, Master in Chancery of said United States District Court, to determine whether or not said contract was valid and binding on Taxi Co.: and

"WHEREAS, said Thomas J. Peden has heard the evi-
dence presented bearing upon said issue, and had
395 made and filed his report and findings of fact; that
said reports find that the contract sued upon is valid
in all respects, and binding upon Taxi Co.: and

"WHEREAS, M. Co. claims damages substantially in excess of One Million Three Hundred Thousand Dollars ($1,300,000); and

"WHEREAS, Sales Co. is engaged in the business of selling Checker taxicabs in the State of Illinois and of furnishing repair and replacement parts in that state; and

"WHEREAS, Taxi Co. is in the business of furnishing taxi service in the City of Chicago and its environs and desires to standardize the cabs used in such service and provide for its future requirements and

"WHEREAS, M. Co. and Taxi Co. have agreed upon a settlement of said damage claim, arising under said contract of February 24th, 1925, and all other differences between them, as hereinafter provided:"

Then the terms of the agreement, the first paragraph (a) relates to the use of the Checker emblem.

No. 2 under (a):

396 "finding that the contract of February 24th, 1925, is a valid and binding obligation of Taxi Co., and that there was a breach of said contract by said Taxi Co., (b) fixing the damages of M. Co. at the sum of Two Hundred and Fifty Thousand Dollars ($250,000), and (c) causing an unconditional judgment to be rendered against Taxi Co. therefor, but with restrictions as to the enforcement of execution as provide in paragraph 25 hereof."

And I proceed down to paragraph 5 on page 151.

Mr. LYSTON: I wonder if you would mind reading 3: so we will have the sequence.

Mr. HOTCHKISS: Certainly.

"3: That Taxi Co. will cause its attorneys, simultaneously with the execution of this agreement, to execute stipulations dismissing with prejudice its bill for review filed in the Superior Court of Cook County, in the case entitled Checker Taxi Company vs. Checker Cab Manufacturing Corporation No. 421997, without costs, it being understood and agreed that all costs
397 heretofore advanced by the parties shall be borne by the parties advancing said costs, and all costs not heretofore advanced shall be borne equally by Taxi Co. and M. Co."

Mr. Hotchkiss: Do you wish No. 4?

Mr. Lynton: No, I think that indicates the point.

Mr. Hotchkiss: No. 5:

"5: That Taxi Co. now does, in consideration of the execution of this contract, affirm and ratify the action of Charles L. Mahoney, a former attorney for Taxi Co. in consenting to the entry of a decree in the Superior Court of Cook County, on February 26, 1925, in the case of Checker Taxi Company vs. Checker Cab Manufacturing Corporation, *et al.*, No. 396939."

I omit the next paragraph and turn to page 152 of the excerpts on the top of the page, reading (B):

"8. That Sales Co. will sell, or cause to be sold through its duly authorized agents or representatives, to Taxi Co. and/or its driver stockholders and/or its
398 drivers, Checker cabs upon the terms and conditions, and subject to the provisions of paragraph 9 hereof, under the specifications set forth in Schedule A hereto annexed, during the period of this agreement, for the price of Two Thousand Three Hundred and Fifty Dollars ($2,350) each F. O. B. Chicago, Illinois subject to the following:"

Then paragraph 10 recites the credit terms of those sales, and 12 refers to the finance charges, and the adding of those finance charges to the face amount of the notes.

I will skip 13 and go to the paragraph on page 153 at the middle of the page.

"During or before the first week of September of each year, the Taxi Co. shall furnish to the Sales Co., an estimate of its requirements for taxicabs during the months of October, November and December following, and if the Sales Co. shall, during said months of October, November and December, following the furnishing of said estimate fail for any reason to fill orders accompanied by deposits as in this contract
399 provided to the amount of said estimate for the period of ten (10) days during said months of October, November and December, the Taxi Co. and/or its driver-stockholders and/or its drivers shall have the right and privilege to purchase cabs elsewhere during the period of said delay, but the right herein given to purchase such cabs elsewhere shall terminate immediately upon written notice by the Sales Co. of its ability to accept and fill orders at the rate provided in this agreement, and its compliance therewith."

Now, turning to page 154 of the excerpts, paragraph 21:

"21. Taxi Co. declares that the Checker Cab manufactured by M. Co. in accordance with the specifications described in Schedule A and dealt in by Sales Co. be and it hereby is designated and selected as the standard cab of Taxi Co.; and it agrees that it will use its best efforts to develop and promote the commercial use of the Checker Cab in its operating territory during the life of this agreement.

"22. Taxi Co. agrees that it will purchase from
400 Sales Co., or its authorized agents or representatives, or cause to be so purchased by its driver-stockholders, and/or drivers, or its controlled affiliated or subsidiary companies or organizations now or hereafter maintained or created, if any, under the terms and conditions herein set forth, all of the taxicabs which it or they may hereafter require, during the life of this agreement, whether for enlarged operation of taxicabs or for replacement of equipment, including any enlargement of operation or replacement of equipment arising out of the admission to Taxi Co. of new driver-stockholders from time to time. Nothing herein contained shall be construed to require Taxi Co. and/or its driver-stockholders and/or its drivers to order and/or pay for any *specified* number of taxicabs during the term of this agreement or any part thereof.

"23. In the event of a default by Taxi Co. in its covenants and agreements to purchase or cause to be purchased all of the taxicabs which it and/or its driver-stockholders and/or its drivers may hereafter require,"—

And I skip the next.

401 "—it will pay to Sales Co., the sum of One Million Dollars (1,000,000.00) in part as and for liquidated damages hereunder,".

And I skip the next portion.

Then at the bottom of the page:

"Taxi Co. represents and warrants that it has licenses to operate 1,750—"

Mr. LYNTON: Where are you now?

Mr. HOTCHKISS: That is at the bottom of page 154, the last sentence.

"Taxi Co. represents and warrants that it has licenses to operate 1,750 taxicabs in the City of Chicago, Illinois, and it estimates that during the term of this agreement it will twice replace its fleet, and in con-

nection with its requirements for such replacing of its fleet it will purchase or cause to be purchased approximately thirty-five hundred (3,500) taxicabs from Sales Co. Inasmuch as Sales Co. estimates that it will make a profit of at least $280.00 per cab for each cab sold hereunder, it is agreed that said sum of One Million Dollars ($1,000,000.00) shall be reduced by
402 the sum of Two Hundred Eighty-six Dollars ($286.00) for each taxicab purchased hereunder from Sales Co. by Taxi Co.—"

And so on.

"It is understood that said sum of One Million Dollars ($1,000,000.00) as so reduced from time to time does not represent the full damages which may be sustained by Sales Co. but is fixed at a substantially lower sum, partly because of the continuance in force of the aforesaid judgment of Two Hundred Fifty Thousand Dollars ($250,000.00) until this agreement has been fully performed by Taxi Co."

Paragraph 25:

Mr. LYNTON: Now, before you go ahead, you have omitted from that excerpt a portion of 24, which I should like to read, if I may.

Mr. HOTCHKISS: Certainly.

Mr. LYNTON:

"To ensure the prompt and faithful performance thereof, by M. Co., said M. Co. agrees simultaneously with the execution of this contract to execute an ir-
403 revocable power of attorney to James H. Wilkerson, Judge of the District Court of the United States for the Northern District of Illinois, Eastern Division, in words and figures as set forth in Schedule E and deposit the same with the said James H. Wilkerson with a letter of instructions to the said James H. Wilkerson as set forth in Schedule F."

Mr. HOTCHKISS: Will you refer to Schedules E and F so the record may be clear?

Mr. LYNTON: I am reading from paragraph 24. I assume it is a part of the document.

Mr. HOTCHKISS: I assume you are reading from a part of the document.

Mr. LYNTON: I am.

Mr. HOTCHKISS: Do you want to read the schedules?

Mr. Lynton: No, I just want to call the Court's attention to the omitted portion of that excerpt.

Mr. Hotchkiss: Very well.

Paragraph 25:

"25. M. Co. agrees that execution on said judgment for Two Hundred Fifty Thousand Dollars ($250,000.00) to be entered as in paragraph '2' above provided shall not be enforced by it so long as Taxi Co. and/or its driver-stockholders and/or its drivers
404 shall not be in default in the covenants relating to the purchase of cabs from Sales Co. set forth more particularly in paragraph 22 hereof."

I omit the balance of that.

And turning to page 156, (D):

"(D) Covenants Chiefly by Taxi Co.

"26. Taxi Co. covenants and agrees, for itself, its driver-stockholders and its drivers, that for the purpose of resisting the issuance and levy of execution under said judgment of Two Hundred Fifty Thousand Dollars ($250,000.00) herein provided for, M. Co. shall be deemed to have defaulted under this contract only if Sales Co. shall have defaulted in the delivery of taxicabs to Taxi Co. and/or its driver-stockholders and/or its drivers pursuant to the provisions of paragraph 16 hereof and such default shall not have been waived by Taxi Co. or cured as provided in paragraph 16.

"27. Taxi Co. agrees that during the life of this agreement it will not purchase, lease or otherwise acquire or use or permit the use of for taxicab ser-
405 vice in its organization, by itself and/or its driver-stockholders and/or its drivers and/or its controlled, affiliated or subsidiary companies or organizations now or hereafter maintained or created, if any, directly or indirectly, any taxicabs other than the taxicabs manufactured by M. Co. and purchased from Sales Co., always excepting the cabs now in the service of Taxi Co., the schedule of which is hereto annexed and made a part hereof as Schedule C, and that Taxi Co. will not make or permit to be made during the life of this agreement, any agreement or understanding for the purchase, lease or other acquisition of taxicabs from any person, firm or corporation other than Sales Co. and that it will not during the term of this agreement manufacture or assemble any

taxicabs or parts for use in its organization, by itself and/or its driver-stockholders and/or its drivers and/or its controlled, affiliated or subsidiary companies or organizations now or hereafter maintained or created, if any, and that it will not admit to membership as a stockholder or driver or employee, or license for the operation of taxicabs, or issue or transfer shares of its stock or memberships in Taxi Co. or in any controlled, affiliated or subsidiary company or organization, directly or indirectly, to any person or persons owning or operating a taxicab other than a cab manufactured by M. Co. and purchased from Sales Co., except those cabs or cars described in Schedule C."

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Then turning to page 157:

"(D-2) COVENANTS BY M. CO. WITH REFERENCE TO DELUXE MOTOR CAB CO., AN ILLINOIS CORPORATION:

"29. M. Co. agrees to cause DeLuxe Motor Cab Co., an Illinois corporation operating a fleet of taxicabs in the City of Chicago, to execute and deliver to the Taxi Co., within thirty (30) days from the date of this contract, a contract substantially as follows:"

Then about the middle of that portion, I start:

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"DeLuxe Motor Cab Co. agrees to not purchase or otherwise acquire for use in its fleet of cabs in the City of Chicago, for a period of five (5) years from February 5th, 1930, any automobiles or taxicabs other than taxicabs manufactured by Checker Cab Manufacturing Corporation, a New Jersey corporation."

Then I skip to page 158, at the top of the page:

"M. Co. further agrees that, during the term of this agreement, it will not, without the written consent of Taxi Co., directly or indirectly form or permit the formation of or become associated with or interested in any corporation, association or other body for the purpose of conducting the business of operating taxicabs for hire in the City of Chicago, Illinois, in competition with Taxi Co., unless such corporation, association or other body shall agree, and file such agreement with Taxi Co., prior to the commencement of its operations, that prior to the fifth day of February, 1935, it will not purchase any cabs or admit to its

organization any person, owning or operating a cab, other than a taxicab manufactured and sold by M. Co., and if this covenant of M. Co. is breached, upon thirty (30) days notice to M. Co. from Taxi Co. of such breach, this contract shall be terminated at the option of Taxi Co., provided the breach is not curred within said thirty (30) days."

Then I omit the next portion and skip down to (b):

"(b) That this contract shall continue for a period of five (5) years from and after the date hereof, expiring on the 5th day of February, 1935."

Mr. Lynton: May I also interpose an additional paragraph which is omitted from your excerpt at this point?

Mr. Hotchkiss: Certainly. It is from the same document?

Mr. Lynton: Yes. I am only reading a part of the paragraph, your Honor, because I think that part illustrates the context of the entire paragraph.

"In the event that either party thereto shall fail to appoint an arbitrator as above provided, in the case of any dispute, difference or question, within ten days after notice from the other party thereto that it demands that such dispute, difference or question shall be submitted to arbitration, the remaining two arbitrators shall be appointed by James H. Wilkerson, Judge of the United States District Court for Northern District of Illinois, or his successor".

Mr. Hotchkiss: I now offer Government's Exhibit No. 89.

Mr. Lynton: Before you offer the Government's Exhibit, will you also stipulate, so that the record may be clear, that each page of this last exhibit is signed by Max Raifman, and that this last agreement was signed on behalf of the Checker Taxi Company by Robert E. McLaughlin, its President?

Will you stipulate those two facts?

Mr. Hotchkiss: Will you add to that stipulation a statement as to who signed for Checker Cab Manufacturing Corporation and Cab Sales and Parts Corporation?

Mr. Lynton: Their respective Presidents as of that date. With respect to Checker Cab Manufacturing Company, it was Mr. Markin, and with respect to Cab Sales and Parts Corporation, if my memory is correct, I think it is Mr. L'Amoreaux.

Mr. Hotchkiss: Subject to check and correct by either party, I am willing to so stipulate.

Mr. Lynton: Will you further stipulate that as of the date of this contract neither Mr. Robert E. McLaughlin nor Mr. Max Raifman were officers, directors or employees of any of the defendant corporations in this action, except Checker Taxi Company?

That defendant, of course, is not the same Checker Taxi Company referred to in this agreement.

Mr. Hotchkiss: I cannot see the materiality or relevancy of that.

Mr. Lynton: I think it is material. Do you have any objection to stipulating that fact?

Mr. Hotchkiss: I would suggest that that be retained for your case, and at that time, we may be quite willing to stipulate. We will examine the question.

Mr. Lynton: Very well.

Mr. Hotchkiss: Now I offer Government's Exhibit No. 89, consisting of the minutes of meeting of
411 Board of Directors of Checker Cab Manufacturing Company held June 18, 1934, in Chicago.

Mr. Lynton: May I have an objection here as to the irrelevancy and immateriality?

How is that document material?

Mr. Hotchkiss: This document is material as one of the chain of documents showing the relationship between the parties, and its shows further towards the middle of page 159, and I read this, subject, of course, to its being stricken in the event the Court rejects this offer:

"Mr. Markin then called attention to the claim of the Checker Cab Manufacturing Corporation"—

And I stop there, and then proceed to the middle of the page:

"—that Mr. L'Amoreaux was deceased and that the representatives of his estate, as well as Mr. Steblins, had denied any obligation on their part to pay said $5,000.00; that recently he, Mr. Markin, had acquired from the L'Amoreaux Estate all of its interest in the capital stock of Cab Sales and Parts Corporation"—

Now, this is what makes it material.

412 Mr. Lynton: Is that all you want it for? The fact of the acquisition of the estate by Mr. Steffens is admitted in the interrogatory. The rest of this document certainly is not material.

Mr. Hotchkiss: We want the circumstances. We want to set forth the circumstances under which this acquisition was secured. It is one of the factors that is involved here. Here in a meeting of the Board of Directors of Checker Cab Manufacturing Company, the President of Checker Cab, Mr. Markin, sees fit to call attention to the other members of the Board that he, Mr. Markin, has acquired all of the stock of this Cab Sales & Parts Corporation.

Mr. Lynton: What is wrong with that? What has that got to do with this case?

Mr. Hotchkiss: There is no issue as to whether the individual statement of the individual act is wrong. I think it is elementary in conspiracy cases that it is conceivable that every single separate act taken by any party to the conspiracy may, in itself, be perfectly legal, but may be a part of the establishment of a conspiracy, and this goes to establish certain allegations of a conspiracy.

413 Mr. Lynton: Your Honor, I realize the difficulties present, at the same time I ask the court to indulge me in suggesting we have some difficulties in connection with these documents, and as I indicated yesterday, those objections can become greater and greater, as the government's ship enters into deeper waters, and loses sight of land. If the government's answer to these objections be simply to say in some general way, it shows the relationship between the parties, it is very difficult to know what to center our question on.

Mr. Hotchkiss: It is certainly one of the—

Mr. Lynton: This is nothing but a purchase of some stock from an estate which is admitted in an interrogatory, and the document otherwise has no relevance.

The Court: At this stage, I think I should allow it to go in subject to your objection. If it is not made relevant or connected up later, it will be stricken.

(Said document, so offered and received in evidence, was marked Government's Exhibit 89.)

The Court: The court will recess at this time.

(Whereupon a recess was taken until 2 o'clock p. m.)

414 No. 46 C 1339

UNITED STATES OF AMERICA, PLAINTIFF,

vs.

YELLOW CAB COMPANY, *et al.*, DEFENDANTS.

Before Judge LaBuy

Wednesday, May 19, 1948,
2 o'clock, p. m.

Court met pursuant to recess.

Present: Mr. Hotchkiss
Mr. Williams
Mr. Lynton
Mr. Ginsberg
Mr. Fuller
Mr. Climenko

The CLERK: The case on trial.

The COURT: Is the government's estimate of time to present its case about the same as it was when you started Monday?

Mr. HOTCHKISS: Your Honor, the government hopes to complete its presentation of the case by Friday, or through Friday. Now, the government wants to have a few witnesses whose testimony will not take very much time. We anticipate that they won't take more than a day, for
415 the witnesses. We are not sure whether we can get through with them on Friday. Now, if we cannot finish with them on Friday, we would like to reserve the opportunity of putting them on when this case reconvenes a week from Monday.

The COURT: You want to continue on until you complete your case?

Mr. HOTCHKISS: Yes.

The COURT: What is the wish of the defense on that score? If the government does not finish this week, is it agreeable to the defense that they put in the balance of their case after this one week of suspension of the trial, or would you rather they go through, if they do not finish this week, and continue on Monday until they do finish?

Mr. LYNTON: I think we would probably prefer that they finish. I may ask, simply because of our own arrangements, that perhaps the resumption, instead of being Monday morning, be Monday afternoon or Tuesday, depending on the convenience of the court.

Mr. HOTCHKISS: Monday is a holiday, isn't it?

Mr. LYNTON: No, that is a week from Monday.

The COURT: What holiday is that, Decoration Day?

416 Mr. HOTCHKISS: Decoration Day.

Mr. LYNTON: Next Monday is the 24th, your Honor.

The COURT: All right. Then assuming that the government does not finish its case until about Monday—do you think you are quite sure you will be through by then?

Mr. HOTCHKISS: I am reasonably sure.

The COURT: All right, Monday, or we will say Tuesday noon. Then the case will be suspended until the following week, Tuesday. Will that be all right with you?

Mr. LYNTON: Yes, that will be all right. That time schedule is perfectly all right.

The COURT: We have to adjust our calendar. I am trying to figure this out. Now, I would like to adjourn a little earlier tomorrow. I have another matter set for 3. If it is agreeable to all the parties, we could start earlier or work longer at noon, or whatever you want to do in order to make up that time.

Mr. HOTCHKISS: I would suggest, your Honor, that we perhaps start at the usual time tomorrow, and then if it becomes apparent that the government might need

417 an extra hour or so, then we can communicate the fact to your Honor.

The COURT: Yes, and we could go overtime or start earlier.

Mr. HOTCHKISS: Yes, later in the week.

The COURT: All right, then we will have that understanding.

Mr. HOTCHKISS: Thank you.

The COURT: Proceed, please.

Mr. HOTCHKISS: We now have a group of documents relating to a contract between CCM and Cab Sales, granting Cab Sales exclusive rights to sell taxicabs to Checker.

I offer Government's Exhibit No. 90.

Mr. LYNTON: Before you do that, I wonder, for the conservation of time, I might make objection with respect to this entire series of documents. The objection again is that it is immaterial and irrelevant, and the basis of the objection is that the situation before and after the date of the alleged conspiracy has not changed in so far as it is material to the government's claim.

The COURT: The same ruling.

(Said document, so offered and received in evidence, was marked Government's Exhibit 90.)

418 Mr. HOTCHKISS: Government's Exhibit No. 90 consists of the minutes of directors' meeting of Cab Sales, dated February 3, 1930, and I start at the first "whereas":

"WHEREAS, There has been presented to this meeting of the Board of Directors, a proposed contract between Checker Cab Manufacturing Corporation, a New Jersey corporation, which corporation is engaged in the manufacture of taxicabs, and this corporation, dealing with and covering the matter of purchase by this company of cabs of Model K, Checker taxicab, manufactured by Checker Cab Manufacturing Corporation, said contract to be for a period of five (5) years from February 5th, 1930, and

"WHEREAS it is deemed for the best interests of this corporation that this corporation enter into said contract with Checker Cab Manufacturing Corporation,

"NOW, THEREFORE, be it

"RESOLVED: That the proposed contract, in words and figures as follows:"

419 Then referring over to page 161, it appears that the contract is between CCM and Cab Sales, and I skip down to "FIRST:"

"The Corporation agrees to appoint and hereby does appoint the Sales Company its representative for the purpose of selling and distributing its taxicabs in the State of Illinois, Indiana and Wisconsin for a period of five (5) years from the date hereof . . ."

Then I skip down to a series of three dots in the same paragraph:

"All taxicabs shall be sold outright to the Sales Company at the price of One Thousand nine hundred six dollars ($1,900) per cab without tires, f. o. b. Kalamazoo, Michigan, . . . By the term 'taxicab' is meant a cab, standard model, as from time to time manufactured or produced by the Corporation for use in the City of Chicago, Illinois, and having the specifications now published by the Corporation with respect to the Model K Checker taxicab of the four door town car type . . ."

Then I skip over to page 162, to the paragraph marked "FOURTH:"

420 "It is understood and agreed that although the Sales Company is hereby appointed the representative of the Corporation in the States of Indiana, Wis-

consin and Illinois, nothing herein contained shall be deemed to mean or be construed as meaning that such appointment is an exclusive one except as to sales to Checker Taxi Company, Chicago,"

Then I skip to the next paragraph, "Fifth," referring to notices to the sales company:

"Fifth: The Corporation may, at any time upon thirty (30) days notice addressed to the Sales Company, c/o Stebbins, L'Amoreaux & Hurtubise, Esqs., 208 South LaSalle Street, Chicago, Illinois, cancel this agreement, but the Corporation agrees that, in the event of any such cancellation, it will nevertheless continue to furnish taxicabs to the Sales Company as above provided for the purpose, but for the sole purpose, of permitting the Sales Company to comply with its covenants and agreements contained in a certain
421 contract dated February 5, 1930, between the parties hereto and Checker Taxi Co."

I offer in evidence Government's Exhibit No. 91, excerpted on page 164. This consists of minutes of directors' meeting of Checker dated April 19, 1935.

(Said document, so offered and received in evidence, was marked Government's Exhibit 91.)

Mr. Hotchkiss: Among those present was M. M. Sokoll, and I read:

"He further advised the meeting that on February 5th, 1930, this company entered into a contract with the Checker Cab Manufacturing Corporation and the Cab Sales & Parts Corporation, whereby this company agreed to purchase or cause its drivers to purchase from Checker Cab Manufacturing Corporation all taxicabs to be used in the service of Checker Taxi Company for a period of five years from the date of the contract; . . .

"The President further advised that he had been approached by Mike Shapiro, operator of the fleet
422 known as the 'Shapiro Fleet' and representative of Cab Sales Parts Corporation, and by a representative of Checker Cab Manufacturing Corporation, concerning the purchase by Cab Sales of five hundred (500) new taxicabs to be operated by Shapiro in the Checker Taxi Service. They submitted a proposition outlined in a contract, which is in words and figures as follows."

And the contract is dated April 19, 1935 between Checker and CCM and Cab Sales, and it provides for the sale of these 500 cabs, and the terms.

Next, I offer Government's Exhibit No. 92 consisting of Plaintiff's Interrogatory No. 20 directed:

"To Cab Sales and Checker (in so far as you have knowledge). With respect to your denial of certain of the allegations of paragraph 34 of the complaint, state:

"(a) The number of shares of stock of Cab Sales upon its incorporation on or about January 20, 1930;

"(b) The name of each buyer from Cab Sales of
423 such stock, the date of sale, and the consideration received therefor by Cab Sales;

"(c) The number of taxicabs sold by Cab Sales to Checker, and Checker drivers, during each year from 1929 to 1934, inclusive, the number of such taxicabs purchased or otherwise procured by Cab Sales from CCM, the price paid for each such taxicab by Cab Sales to CCM, and the price at which Cab Sales sold each."

(Said document, so offered and received in evidence, was marked Government's Exhibit 92.)

Mr. Hotchkiss: Government's Exhibit 93 consists of Cab Sales Answer to Plaintiff's Interrogatory No. 20.

(Said document, so offered and received in evidence, was marked Government's Exhibit 93.)

Mr. Hotchkiss: I will not read that.

Government's Exhibit No. 94 consists of Checker's answer to Plaintiff's Interrogatory No. 20.

(Said document, so offered and received in evidence, was marked Government's Exhibit 94.)

424 Mr. Hotchkiss: The answers of Checker are identical answers to Cab Sales, and I will not read that.

Mr. Lynton: Well, you read the interrogatory, and you are not reading the answers?

Mr. Hotchkiss: If you wish, I will be happy to read the answers. They are in evidence.

Mr. Lynton: I suggest you read Exhibit 93. I think it will help the sequence.

Mr. Hotchkiss: I will be happy to do so. 93 is Cab Sales' answer to Plaintiff's Interrogatory No. 20:

"(a) 1,000 shares were authorized, 500 of which were issued on or about April 5, 1930.

(5) Date	No. of Shares	Buyer
April 5, 1930	500	Paul C. L'Amoreaux
June 1, 1932	277	LaSalle Discount Corp.
June 1, 1931	500	LaSalle Discount Corp.

"The consideration for each of such purchase was cash.

"(c) During 1929, no taxicabs were sold by Cab Sales to Checker or drivers of Checker taxicabs, and no taxicabs were purchased by Cab Sales from CCM.

425 "During 1930, about 101 taxicabs were sold by Cab Sales to drivers of Checker taxicabs, all of which were purchased by Cab Sales from CCM. The purchase price on the purchase by Cab Sales from CCM was, generally, $1,980.00 per cab exclusive of finance charges; and the sales price, on the sale by Cab Sales to drivers of Checker taxicabs was, generally, $2,350 per cab exclusive of finance charges. These drivers of Checker taxicabs did not, however, always pay the full amount of the sales price, but defaulted in such payments, and on default their taxicabs were either abandoned or repossessed.

"During 1931 about 88 taxicabs were sold by Cab Sales to drivers of Checker taxicabs, all of which were purchased by Cab Sales from CCM. The purchase price on the purchase by Cab Sales from CCM was, generally $1,565 per cab exclusive of finance charges; and the sales price on the sale by Cab Sales to drivers of Checker taxicabs was, generally, $1,945 exclusive of finance charges. Additionally, during 1931, about

426 123 taxicabs were repossessed and sold by Cab Sales to drivers of Checker taxicabs, the sales price of which was generally about $950 per cab exclusive of finance charges. These drivers of Checker taxicabs again did not always pay the full amount of the sales price, but defaulted in such payment, and on such default their taxicabs were either abandoned or repossessed.

"During 1932, no taxicabs were purchased by Cab Sales from CCM, but Cab Sales sold about 33 repossessed taxicabs to drivers of Checker taxicabs. The sales price of such repossessed taxicabs was generally, about $800 per cab. These drivers of Checker taxicabs again did not always pay the full amount of the sales price, but defaulted in such payment, and on such

default their taxicabs were either abandoned or repossessed.

"During 1933 and 1934, no taxicabs were purchased by Cab Sales from CCM, and none were sold by Cab Sales to drivers of Checker taxicabs."

Mr. LYNTON: For the record, may I indicate
427 that my last standing objection comprises all documents read since the making of that objection through this last mentioned exhibit?

The COURT: The record may so show.

Mr. HOTCHKISS: Next, we have a group of documents relating to agreements under which Checker purchased motor fuel, lubricating oils and related supplies from Cab Sales exclusively and Cab Sales purchases such supplies from Benzolene exclusively with delivery made direct to Checker.

I now offer Government's Exhibit No. 95.

Mr. LYNTON: I should like to make objection to this series of exhibits on the ground of irrelevancy and immateriality, and before the court rules on it, I should like to invite the attention of the court to the fact that these particular documents seem to relate merely to a question of the purchase of gasoline, and it seems to me have no relationship to any of the charges in this complaint. Of course, I am aware that the government is going to say in general it has some relation to the general issue, but I submit the documents dealing with the purchase of gasoline in no way relate to sales.

Mr. HOTCHKISS: I believe, your Honor, that these
428 should be offered and accepted on the same basis as the previous ones. The connections will be shown, the relationship between this sale of gasoline, and the loan which was made by affiliates of Yellow to Cab Sales to enable it to acquire control of its stock of Checker. Now, those are certainly allegations contained in the complaint, and this particular Government Exhibit No. 95 ties in very closely with that situation.

The COURT: The objection is overruled.

(Said document, so offered and received in evidence, was marked Government's Exhibit 95.)

429 Mr. HOTCHKISS: Government's Exhibit 95 consists of the minute of the stockholders' meeting of Cab Sales and Parts Corporation, held under date of May 13, 1931.

"WAIVER OF NOTICE

"The undersigned, constituting all of the Stockholders of Cab Sales and Parts Corporation, a Delaware corporation, hereby waive all notice required by law or the By-Laws of the corporation, for the calling and holding of a special meeting of the stockholders, . . .

* * *

"DATED: May 13, 1931.

s/ PAUL C. L'AMOREAUX

"The Chairman stated that the meeting had been been called for the purposes set forth in said Waiver, and the Secretary read to the meeting the minutes of a special meeting of the Board of Directors held on this day at the office of the corporation at the hour of ten o'clock A. M.

"Thereupon, on motion duly made and seconded, and unanimously carried by the affirmative vote of all the Stockholders of the corporation, the following reso-
430 lution was adopted:

"RESOLVED: That the Stockholders of this corporation hereby consent to, and ratify and approve of, the execution and delivery by this corporation of the contract between this corporation and Benzoline Motor Fuel Co. authorized by the Board of Directors at the special meeting held May 14, 1931."

Then toward the bottom of page 167 of the excerpts:

"RESOLVED: That all of the Stockholders of this corporation consent to, and ratify and approve of the sale by this corporation to Benzoline Motor Fuel Co. of an issue of $500,000 principal amount of ten-year 6% collateral Trust Gold Notes, and the execution and delivery of a Collateral Trust Agreement, pledging as security for the payment of principal and interest of said notes 30,525 shares of the capital stock of Checker Taxi Company, and the Benzoline contract and Checker contract, referred to in said Collateral Trust Agreement; all in accordance with the resolu-
431 tions adopted by the Board of Directors of this corporation at the special meeting held May 14, 1931."

Then I proceed to the attached agreement.

"THIS AGREEMENT made and entered into this day of May, A. D. 1931, by and between Cab Sales and Parts Corporation, * * * and BENZOLINE MOTOR FUEL Co., * * *

WITNESSETH:

"WHEREAS, SALES CO. is engaged in the business of selling and dealing in taxicabs and other motor vehicles and automotive repair parts, tires, gasoline and other supplies used and usable in connection with the operation of taxicabs and other motor vehicles, and has entered into a contract to furnish the Checker Taxi Company, for and during the period of ten (10) years, commencing May 16, 1931, all motor fuel, lubricating oil, grease and automobile soaps used or required by Checker Taxi Company, * * * "

Then I skip a little. The next "WHEREAS" refers to the Sales Co. desiring to purchase from Benzoline these
432 supplies, and then it refers to Benzoline's willingness to sell these supplies.

"FIRST: Sales Co. agrees to obtain from Benzoline and Benzoline agrees to supply to Sales Co., during the period of ten (10) years commencing May 16, 1931, and ending May 15, 1941, all motor fuel, lubricating oil, grease and automobile soap required by Sales Co. in order to enable it to furnish Checker Taxi Company with all motor fuel, lubricating oil, grease and automobile soap agreed to be furnished by Sales Co. to Checker Taxi Company under said aforementioned agreement, * * * "

Then there are other terms of the agreement.

On page 170, toward the bottom of the page, it reads:

"FOURTH: All motor fuel, lubricating oil, grease and automobile soap so supplied by Benzoline and delivered to Checker Taxi Company pursuant to the terms hereof shall be billed by Benzoline (on behalf of Sales Co.) to Checker Taxi Company, at prices determined and/or fixed as provided in the above mentioned contract
433 between Sales Co. and Checker Taxi Company * * * "

I will not read the rest of that exhibit.

I offer Government's Exhibit 96, consisting of the minutes of the directors' meeting of Benzoline, dated May 14, 1931.

Mr. LYNTON: If the Court please, as a matter of record only, may I note a standing objection on the ground of irrelevancy and immateriality, until I next suggest the end of that?

There is a long series of documents about these things.

The COURT: The record may show the objection.

(Said document, so offered and received in evidence, was marked Government's Exhibit 96.)

Mr. Hotchkiss: Government's Exhibit 96 reads:

"There were present: S. H. Kesner, and Benjamin Samuels constituting a majority and quorum of the Board of Directors of the corporation.

"Mr. S. H. Kesner, the President of the corporation, acted as Chairman of the meeting, and Mr. Benjamin Samuels, the Secretary of the corporation, acted as
434 Secretary thereof.

"The Chairman submitted to the meeting draft of proposed contract to be entered into between Cab Sales and Parts Corporation and this corporation, to which was annexed as 'Exhibit 1' copy of contract dated May 1, 1931, entered into between Cab Sales and Parts Corporation and Checker Taxi Company, which proposed contract between Cab Sales and Parts Corporation and this corporation, together with Exhibit 1 thereto annexed, was ordered incorporated in the minutes of this meeting . . ."

Then, at the top of page 173:

" * * * the following resolution was unanimously adopted:

"Resolved, that this corporation enter into a contract with Cab Sales and Parts Corporation in the form submitted to this meeting. . . .

"The Chairman further stated that in order to induce said Cab Sales and Parts Corporation to enter into said contract with this corporation, it is necessary for this corporation to purchase from Cab Sales
435 and Parts Corporation an issue of $500,000 principal amount of Cab Sales and Parts Corporation Ten-Year 6% Collateral Trust Gold Notes dated May 1, 1931, * * * "

Then I skip down toward the bottom of the page:

"The Chairman stated that this corporation did not have available, cash in sufficient amount to consummate the purchase of said issue of $500,000 principal amount of Cab Sales and Parts Corporation Ten-Year 6% Collateral Trust Gold Notes, and stated that Yellow Cab Company was willing to loan to this corporation all or any part of the amount necessary to enable this corporation to consummate said purchase.

"Thereupon, on motion duly made and seconded and by the affirmative vote of all the directors of the corporation present at this meeting, the following resolution was unanimously adopted:

"Resolved, that this corporation borrow such sum as it may require for the purpose of consummating
436 such purchase, not exceeding in the aggregate $500,000, from Yellow Cab Company, a Maine corporation, . . . "

I now offer Government's Exhibit 97, being plaintiff's interrogatory No. 22 to Cab Sales.

(Said document, so offered and received in evidence, was marked Government's Exhibit 97.)

Mr. Hotchkiss:

"To Cab Sales. Did you expend any part of the $500,000 borrowed by you from Benzoline Motor Fuel Co. in May 1931 to purchase, directly or indirectly, stock of Checker? If so, how much was so spent? If not, state generally for what the money was expended."

I offer Government's Exhibit 98.

(Said document, so offered and received in evidence, was marked Government's Exhibit 98.)

Mr. Hotchkiss: Government's Exhibit 98, being Cab Sales' answer to plaintiff's Interrogatory No. 22, states:

"Yes, all."

Mr. Hotchkiss: I offer Government's Exhibit 99,
437 consisting of minutes of directors' meeting of Checker Cab Manufacturing Company, dated May 22, 1931.

(Said document, so offered and received in evidence, was marked Government's Exhibit 99.)

Mr. Hotchkiss: There is a certain discussion as to the sale of used cabs, there being present Morris Markin, Ralph L. Oakland, and so on.

"The Chairman then presented to the meeting a form of agreement to be entered into between this corporation and Yellow Cab Company of Chicago, relating to the purchase of 1,000 Model M taxicabs."

Upon motion duly made and seconded, a resolution was unanimously adopted approving the agreement.

"Upon motion duly made and seconded, the following resolutions were unanimously adopted:

"Resolved that a special account, to be designated as the 'Checker Cab Manufacturing Corporation Special Account No. "A"' be opened in Foreman-State National Bank * * * "

438 Then I skip down to:

"Further Resolved that all funds deposited in said special account shall be subject to withdrawal, except as hereinafter otherwise provided, only on the check,

draft or other order of this corporation, signed by Morris Markin, President, or by Ralph L. Oakland, Treasurer of this corporation, provided the same shall be countersigned by any one of the following named agents of this corporation: Arthur W. Moore, President of Yellow Cab Company of Chicago, and Thomas B. Hogan, S. H. Kesner and Benjamin Samuels, Vice-President of Yellow Cab Company of Chicago or any successor president or any successor or other vice-president of Yellow Cab Company of Chicago."

I skip over to the bottom of page 176:

"The Chairman then stated that interests friendly to this corporation had acquired a controlling interest in the stock of Checker Taxi Co., an Illinois corporation, with which this corporation had a contract for
439 the sale of taxicabs, which contract was secured by the entering of a judgment against said Checker Taxi Co. for the sum of $250,000. He further stated that in view of the change in the control of Checker Taxi Co. it might be deemed advisable to arrange for the satisfaction of said judgment and take other action to revise the contract between this corporation and Checker Taxi Co. and Cab Sales and Parts Corporation, the third party to the aforesaid contract."

Then, on motion duly made, the recommendation was adopted.

I offer Government's Exhibit 100, on page 177 of the excerpts. This consists of minutes of directors' meeting of Benzoline.

(Said document, so offered and received in evidence, was marked Government's Exhibit 100.)

"There were present: S. H. Kesner, Benjamin Samuels, Rudolph H. Bieze constituting the entire Board of Directors of the corporation.

"Mr. S. H. Kesner, the President of the corpora-
440 tion, acted as Chairman of the meeting, and Mr. Benjamin Samuels, the Secretary of the corporation, acted as Secretary thereof."

The remainder of the exhibit deals in the main with certain changes which must be made in the outstanding contracts, due to the fact that the assets of Checker, an Illinois corporation, have been transferred to Checker, a Delaware corporation, and I will not read the rest of that.

The next group of exhibits deal with:

"Agreement under which Waverly (a Yellow subsidiary) loans Cab Sales $200,000 to purchase further and dominating control of Checker stock, with Waverly borrowing $180,000 from this amount from Yellow in order to make the loan."

I offer Government's Exhibit 101, consisting of a letter from L'Amoreaux, President of Cab Sales, to Waverly, dated October 15, 1932, appearing at page 181 of the excerpts.

(Said document, so offered and received in evidence, was marked Government's Exhibit 101.)

Mr. Hotchkiss: There is a handwritten notation
441 apparently made by the Secretary of Waverly on the face of the letter, stating as follows:

"'Copy of offer submitted to meeting of Board of Directors of the Waverly Corporation held October 21, 1932.'"

"The undersigned, Cab Sales and Parts Corporation, a Delaware corporation, hereby offers to sell to you $200,000 aggregate principal amount of its 6% Collateral Trust Sinking Fund Gold Notes (of an authorized issue of $200,000), at the face amount of said notes plus accrued interest from October 1, 1932, * * *"

I will skip the remainder of that.

Paragraphs (a), (b) and (c) deal with the security that has been put up with the trustee.

"(a) 29,100 shares of the capital stock without par value of Checker Taxi Company, * * *"

"(b) All the right, title and interests (but not the obligations) of the undersigned in, to and under all the income moneys, profits and benefits payable to the
441-a undersigned under an agreement made July 19, 1932, between the undersigned and Checker Taxi Company, covering certain cabs and drivers formerly operating in the fleet of the Chicago Cab Company and known as the Chicago Cab Contract.

"(c) 30,525 additional shares of the capital stock of said Checker Taxi Company,"

and certain other matters.

Then provision is made for the retirement of these notes.

442 Then, toward the bottom of page 182, it reads:

"We believe that the moneys to be realized from the Chicago Cab contract pledged will be more than sufficient for the sinking fund requirements. The contract has approximately four years and ten months unexpired life, and by its terms the Checker Taxi Company will pay to the undersigned one-half of all of the moneys received by them from the driver personnel owning the cabs, acquired in excess of $25 per cab per month. Each owner driver pays to the Checker Taxi Company for single shift operation $55 per month; for double shift operation, $75 per month. The average number of cars operated in single shift is about 50% of the whole. There now remains in its fleet of the cabs required by Checker Taxi Company, 211 at this date, so that the income to this company should approximate one-half of $40 per cab per month —a gross of $4,220 monthly, or $50,640 per annum."

I skip to the next paragraph:

443 "Due to abnormal business conditions existing in the last year and to two unusually mild winters, the number of cabs in the Checker Taxi fleet is at the lowest point for many years past, and consequently our profits from the sale of cabs, parts and gasoline are likewise at a low ebb."

Then I skip down farther on the page to:

"We further anticipate that public demand for taxicab service will greatly increase during the following year because of Chicago World's Fair, and that we will not experience the usual and seasonal fall off in business during the summer months of 1933. We feel that driver personnel will be substantially increased during that period and that as a result, substantial general earnings will also be available for the sinking fund requirements under the trust agreement securing the notes hereby offered you.

"The proceeds of the sale of said $200,000 of 6% Collateral Trust Sinking Fund Gold Notes will provide the undersigned with funds which it requires to

444 effect the purchased of 19,250 of the 29,100 shares of capital stock of Checker Taxi Company referred to in paragraph (a) above."

Mr. Lynton: Will you mention the name of the Trustee under Government's Exhibit 101?

Mr. Hotchkiss: Foreman's State Trust & Savings Bank, Trustee.

I offer Government's Exhibit 102, consisting of the minutes of the stockholders' meeting of Cab Sales, dated October 20, 1932.

(Said document, so offered and received in evidence, was marked Government's Exhibit 102.)

Mr. Hotchkiss: There is a waiver of notice signed by Paul L'Amoreaux, being the sole stockholder. The stockholders thereupon approved the contract referred to in the preceding exhibit.

I offer Government's Exhibit 103, being the minutes of directors' meeting of Waverly, dated October 21, 1932.

(Said document, so offered and received in evidence, was marked Government's Exhibit 103.)

Mr. Hotchkiss: (Reading)

445 "There were present: Ernest H. Miller, Joseph J. White, Benjamin Samuels, constituting the entire Board of Directors of the corporation.

"Mr. Thomas B. Hogan, President of Yellow Cab Company, Mr. Sol Kesner, President of Benzoline Motor Fuel Co. and Mr. R. H. Bieze, Treasurer of Yellow Cab Company, were present by invitation of the Chairman.

Mr. Ernest H. Miller, the President of the corporation, acted as Chairman of the meeting, and Mr. Joseph J. White, the Secretary of the corporation, acted as Secretary thereof.

"The Chairman stated that this Corporation is the owner of upwards of 81,700 shares of the 400,000 issued and outstanding shares of stock of Chicago Yellow Cab Company, Inc., a New York corporation, which is the owner of all the issued and outstanding shares of stock (except directors' qualifying shares), of Benzoline Motor Fuel Co., an Illinois corporation, and that said Benzoline Motor Fuel Co. is the owner and hold-

446 er of the entire issued and outstanding $500,000 principal amount of Ten-year 6% Collateral Trust Gold Notes of Cab Sales and Parts Corporation, dated as of May 1, 1931, * * *"

Thereafter there is reference made to the security for these notes. Then, at the top of page 186:

"that Cab Sales and Parts Corporation now owns 9,850 shares of stock of said Checker Taxi Company, in addition to the 30,525 shares pledged under said

Collateral Trust Agreement, and is about to complete the purchase of 19,250 additional shares, and upon the completion of such purchase will own 29,100 shares of stock of said Checker Taxi Company in addition to the 30,525 shares heretofore pledged, making its total holdings 59,625 shares of stock of said Checker Taxi Company, being 97.74% of the issued and outstanding shares of stock of said Checker Taxi Company; that Cab Sales and Parts Corporation has not sufficient funds to complete the purchase of said 19,250 additional shares, and in order to obtain funds with
447 which to consummate such purchase, Cab Sales and Parts Corporation desires to issue and sell, at par and accrued interest, $200,000 principal amount of 6% Collateral Trust Sinking Fund Gold Notes, * * *"

Then it goes on into the matter of collateral, and on page 187, toward the top of the page:

"The Chairman further stated that the acquisition by Cab Sales and Parts Corporation of said additional shares would give Cab Sales and Parts Corporation 97.74% of the issued and outstanding shares of stock of Checker Taxi Company, all of which stock will be pledged under said Collateral Trust Agreement dated as of May 1, 1931, and/or under said Collateral Trust Agreement to be dated as of October 1, 1932. Further, that the acquisition of said 19,250 additional shares of stock by Cab Sales and Parts Corporation would give it substantially complete ownership and control of Checker Taxi Company and would be beneficial to Checker Taxi Company and in that connection said
448 shares are being acquired from persons who have been actively opposed to the present management and who constitute a source of serious dissension in its affairs, which opposition and source of dissension would be entirely eliminated by the acquisition of said shares by Cab Sales and Parts Corporation, and the elimination of such persons will almost certainly be reflected in better operations of Checker Taxi Company, which should be beneficial to Benzoline Motor Fuel Co. with respect to the quantity of gasoline, oil and other supplies furnished by it under the contract between Benzoline Motor Fuel Co. and Cab Sales and Parts Corporation and the contract between Cab Sales and Parts Corporation and Checker Taxi Company, which contracts constitute part of the pledged secur-

ity for said $500,000 of notes held by Benzoline Motor Fuel Co."

I then turn to page 188 of the excerpts, in said exhibit, and I read:

"Mr. BENJAMIN SAMUELS, President of Chicago Yellow Cab Company, Inc., Mr. THOMAS B. HOGAN
449 and Mr. R. H. BIZZE stated that they concurred in and approved the foregoing statements made by the Chairman.

"The Chairman further stated that Cab Sales and Parts Corporation had requested Benzoline Motor Fuel Co. to consent to certain changes in the sinking fund provisions,"

and those changes are set forth there.

On page 189 of the excerpts, toward the top of the page, I read:

"The Chairman and Messrs. Samuels and Hogan stated that they concurred in the views expressed by Mr. Sol Kesner.

"The matter was thereupon considered, and on motion made by Mr. Samuels, seconded by Mr. White, the following preambles and resolutions were unanimously adopted by the affirmative votes of all the directors of the corporation:

"Now, THEREFORE, BE IT RESOLVED, that this corporation accept said offer of Cab Sales, * * *"

I then turn to the top of page 190:

450 "FURTHER RESOLVED, that the proper officers of this corporation be and they hereby are authorized and empowered, for and on behalf and in the name of this corporation, to purchase said issue of notes and pay therefor the sum of $200,000 plus accrued interest on said notes from October 1, 1932, to the date of such purchase, all in accordance with and subject to the terms and conditions of said offer and of these resolutions.

"The Chairman stated that this corporation did not have available cash in sufficient amount to consummate the purchase of said issue of $200,000 principal amount of Cab Sales and Parts Corporation 6% collateral Trust Sinking Fund Gold Notes.

"The Chairman further stated that Yellow Cab Company, a Maine corporation, was the owner and holder of all of the issued and outstanding shares of the common stock of this corporation, and suggested

borrowing the sum of $180,000 from said Yellow Cab Company with which to consummate the purchase of said issue of notes.

451 "The matter was fully considered, and on motion duly made and seconded and by the affirmative note of all the directors of the corporation, the following resolution was unanimously adopted:

"RESOLVED, that this corporation borrow from Yellow Cab Company, a Maine corporation, the sum of $180,000, to enable this corporation to purchase the issue of $200,000 principal amount of Cab Sales and Parts Corporation 6% Collateral Trust Sinking Fund Gold Notes to be dated as of October 1, 1932, * * *"

Mr. LYNTON: Will you mention the name of the Trustee under this indenture?

Mr. HOTCHKISS: Certainly. It is the same as I mentioned previously, is it not, or is it a different one? Will you call my attention—

Mr. LYNTON: I think in both cases the original indenture was made with the Foreman State Trust & Savings Bank, and on its resignation the First Union Trust & Savings Bank succeeded as successor-trustee.

Mr. HOTCHKISS: Is there any reference to the second bank in this document?

Mr. LYNTON: Page 185 has the first reference in

452 this document to that, a little below the middle.

Mr. HOTCHKISS: Page 185 refers to the Foreman-State Trust & Savings Bank.

Mr. LYNTON: Yes.

Mr. HOTCHKISS: "that said Foreman-State Trust & Savings Bank has since resigned as such trustee and First Union Trust & Savings Bank has been appointed successor-trustee under said collateral trust agreement."

Now, I offer Government's Exhibit 104, consisting of Minutes of Directors Meeting of Yellow Cab, dated October 21, 1932.

(Said document, so offered and received in evidence, was marked Government's Exhibit 104.)

"There were present: Ernest H. Miller, Benjamin Samuels, Thomas B. Hogan, S. H. Kesner, Joseph J. White, Rudolph H. Bieze, Edward N. D'Ancona, constituting a majority of and quorum of the Directors of the corporation.

"Mr. Ernest H. Miller acted as Chairman of the meeting and Mr. Edward N. D'Ancona acted as Secretary thereof.

"The Chairman stated that this corporation is the owner of 6,000 shares of common stock of the par value of $100 each of THE WAVERLY CORPORATION, a
453 Delaware corporation, being all the issued and outstanding shares of common stock of The Waverly Corporation; that The Waverly Corporation desired to borrow the sum of $180,000 and stated that this corporation had available funds in excess of that amount and recommended this corporation loaning the sum of $180,000 to The Waverly Corporation. Messrs. Hogan, Samuels and Bieze stated that they concurred in the recommendation of the Chairman."

Whereupon, a motion being put by Mr. Hogan and seconded by Mr. Bieze, the recommendation was duly adopted.

I offer Government's Exhibit 105, being Plaintiff's Interrogatory No. 24 to Cab Sales.

(Said document, so offered and received in evidence, was marked Government's Exhibit 105.)

"To Cab Sales. Did you expend any part of the $200,000 borrowed by you from The Waverly Corporation in 1932 to purchase, directly or indirectly, stock
454 of Checker? If so, how much was so spent? If not, state generally for what the money was expended."

I offer Government's Exhibit 106, being Cab Sales Answer to Plaintiff's Interrogatory No. 24.

(Said document, so offered and received in evidence, was marked Government's Exhibit 106.)

Mr. HOTCHKISS: The answer reads:

"Yes. All."

At this point I will turn the reading over to my associate, Mr. Williams.

Mr. WILLIAMS: I offer as Government's Exhibit 107 the minutes of the Director's Meeting of Benzoline, dated October 21, 1932.

(Said document, so offered and received in evidence, was marked Government's Exhibit 107.)

Mr. WILLIAMS: I will omit the first part of this exhibit, and start reading the letter from Cab Sales and Parts Corporation to Benzoline Motor Fuel Co., which appears at the bottom of page 192:

455 "In connection with the ten year 6% collateral gold notes in the aggregate principal amount of $500,000, executed by us and held by you, we desire to advise you:

"1. That due to the general business depression existing for the period since May 1, 1931, the income from our gas sales has fallen off to the extent that we have been unable to deposit in the sinking fund created by Article V of the Collateral Trust Agreement, sufficient funds to redeem the $40,000 principal amount of notes therein provided to be redeemed on or before May 12th, 1932.

"We, therefore, request you to consent to an amendment to said Collateral Trust Agreement extending the time within which to redeem said $40,000 principal amount of notes, and also extending the time within which to redeem the $45,000 principal amount of notes required to be redeemed on or before May 1, 1933, so that said $85,000 principal amount of notes will be redeemed as follows:

456 "$25,000 thereof on or before May 1, 1933.
"$50,000 thereof on or before October 1, 1933,
"$5,000 thereof on or before May 1, 1934,
"$5,000 thereof on or before May 1, 1935."

The letter then offers to make certain changes in the collateral

The minutes proceed at the bottom of page 193 to show that Benzoline agreed to the proposal from Cab Sales.

Mr. WILLIAMS: I offer as Government's Exhibit 108 a memorandum Oakland, of C.C.M., to McMath, of Checker, dated September 14, 1933.

(Said document, so offered and received in evidence, was marked Government's Exhibit 108.)

Mr. WILLIAMS: The letter states:

"It is my understanding that on trust #17221 the Benzoline pay Cab Sales a commission on all gas sold to Checker Taxi Co. and they deposit this commission in a sinking fund for the retirement of these bonds.

457 "Kindly confirm this and also advise me the rate of commission."

Mr. WILLIAMS: I offer Government's Exhibit 109, being letter from McMath, Treasurer of Checker, to Oakland of CCM, dated September 15, 1933.

(Said document, so offered and received in evidence, was marked Government's Exhibit 109.)

Mr. WILLIAMS: The letter states:

"I am in receipt of your letter under date of September 14th regarding Trust #17221 and beg to advise you as follows:

"Cab Sales and Parts Corporation is billed indirectly for gasoline and oil, and Checker Taxi Company is also billed at a certain rate, the difference between the two billings being commission due Cab Sales and Parts Corporation, which is deposited in the Sinking Fund for the retirement of these bonds. Cab Sales is charged the purchase price of benzoline plus seven-eighths of a cent per gallon for handling. Checker Taxi Company is charged on the basis of the average daily quotation over a period of fifteen days, based on the Platt's Oil Gram, plus one and three-
458 fourths cents per gallon for handling. Therefore, you will readily see that the commission or rebate to Cab Sales and Parts Corporation fluctuates on every fifteen day period, but, for your information, may add that the average commission per month for 1933 was approximately $2,300.00 to $2,400.00 per month. The commission for August, 1933 is $2,385.80.

"Referring to the oil, we purchase and sell three grades of oil, upon which Cab Sales receives a rebate of six cents, ten cents, and fourteen cents per gallon respectively."

459 I offer as Government's Exhibit 110 the minutes of the directors' meeting of Benzoline dated November 16, 1933.

(Said document, so offered and received in evidence, was marked Government's Exhibit 110.)

Mr. Williams: (Reading)

"The chairman thereupon stated that Cab Sales and Parts Corporation is in default in the payment of its Ten Year 6% Collateral Gold Notes, dated as of May 1, 1931, $490,000.00 (the entire amount outstanding) of which are owned by this corporation; that $15,000.00 of Notes due May 1, 1933, remain unpaid and $50,000.00 due October 1, 1933, remain unpaid; that The First National Bank of Chicago, as Trustee under the Collateral Trust Agreement, dated as of May 1, 1931, securing said Notes, has on hand sufficient moneys to pay the semi-annual interest due November 1st and the amount of $5,000.00 to apply on the principal; that said Bank requests a letter from this corporation, advising them in reference to the desire of this cor-
460 poration to take action under said Collateral Trust Agreement in reference to foreclosing on the securities deposited under said Agreement. The President thereupon presented the letter which he pro-

posed to sign in reference to accepting the sum of $5,000.00 in payment of Note No. 3 and advising the Bank to take no steps to foreclose on the collateral deposited under said Agreement."

That has also been shown by prior exhibits, particularly to No. 107. The securities included a large portion of stock of Checker Taxi. The resolution then approved this proposal.

Mr. LYNTON: Since we have come to this point, may I inquire whether the government will stipulate that the general business depression which started approximately October of 1929 and lasted at least through the period of the bank holidays and the moratoria in the early part of 1933?

Mr. WILLIAMS: I would like to discuss that with you first before we enter into any such stipulation.

The COURT: The court stands recessed for ten minutes.

461 (Thereupon a recess was taken.)

Mr. WILLIAMS: I wish to state a stipulation for the record in connection with Government's Exhibit No. 93.

It is stipulated, as I understand it, that about June 1, 1931, the LaSalle Discount Corporation, which is referred to in that exhibit, was a holding company of all or substantially all of the stock, and LaSalle Discount Corporation was at that time owned by Morris Markin, is that correct?

Mr. LYNTON: It is so stipulated by the defendant Markin, and each and all of the defendants object to it on the ground it is not binding upon them. That is our standing objection.

Mr. WILLIAMS: I offer Government's Exhibit 111, Minutes of Directors' Meeting of Benzoline dated April 19, 1934.

(Said document, so offered and received in evidence, was marked Government's Exhibit No. 111.)

Mr. WILLIAMS: This exhibit is similar to Exhibit 110, the preceding one, but is dated six months later. It again

462 relates to the question of changing the terms of payment by Cab Sales of its collateral gold notes. The directors of Benzoline again resolved not to foreclose on the collateral which Cab Sales had posted.

Mr. LYNTON: May I mention that The First National Bank of Chicago is Trustee under a collateral trust agreement referred to in that exhibit?

Mr. Williams: I offer as Government's Exhibit 112 an agreement between Cab Sales, Benzoline and Waverly, dated August 1, 1934.

(Said document, so offered and received in evidence, was marked Government's Exhibit 112.)

Mr. Williams: (Reading)

"This Agreement, entered into as of the 1st day of August, 1934, between Cab Sales and Parts Corporation, a corporation, organized and existing under and by virtue of the laws of the State of Delaware (hereinafter called the 'Company'), party of the first part; Benzoline Motor Fuel Co., a corporation organized and existing under and by virtue of the laws of the
463 State of Illinois (hereinafter called 'Benzoline'), party of the second part; and The Waverly Corporation, * * *"

I will not read the terms of the agreement. Cab Sales agrees not to sell the pledged stock of Checker which has been pledged as collateral of its gold notes until after Benzoline and Waverly are given an opportunity to buy it. The agreement provides that it is to last until after the money borrowed to buy Checker stock has been paid. I will read the last sentence of the agreement:

"It is further agreed that if either Benzoline or Waverly does not desire to exercise in full its rights to so purchase said shares according to this paragraph following any such notice, the party not desiring so to do may assign to the other party such of its said purchase rights as such party does not exercise."

Mr. Lynton: Now, the collateral trust agreement and the supplement to that collateral trust agreement was held by the First National Bank of Chicago as trustee, is that right?

Mr. Williams: I believe it so states in the exhibit.

464 I will offer Government's Exhibit 113, which is the Minutes of Directors' Meeting of Chicago Yellow, dated August 3, 1934.

(Said document, so offered and received in evidence, was marked Government's Exhibit 113.)

Mr. Williams: These minutes state that Cab Sales has requested Benzoline and Waverly to reduce the interest rate on the loans from 6% to 4%, and to release, until September 1, 1935, all profit resulting to Cab Sales and Parts Corporation from sales made pursuant to the contracts pledged to secure such notes.

I offer as Government's Exhibit 114 a letter dated August 14, 1934 from McMath, Vice President of Cab Sales, to Waverly.

(Said document, so offered and received in evidence, was marked Government's Exhibit 114.)

Mr. WILLIAMS: This letter asks Waverly to accept 4% interest rate, and to waive further interest payments until September 1, 1935, which is about a year after the date of the letter. It also submits the agreement which is Government's Exhibit 112.

465 I offer as Government's Exhibit 115, Minutes of Directors' Meeting of Benzoline, dated August 14, 1934.

(Said document, so offered and received in evidence, was marked Government's Exhibit 115.)

466 This exhibit is a resolution approving the agreement which is Government's Exhibit 112, and it recognizes that Cab Sales is the default in payment of interest under its loan.

I offer as Government's Exhibit 116 minutes of directors' meeting of Yellow, dated August 14, 1934.

(Said document, so offered and received in evidence, was marked Government's Exhibit 116.)

Mr. HOTCHKISS: And this exhibit authorizes Waverly to consent to Cab Sales' request for diminution of the interest rate.

I offer as Government's Exhibit 117 minutes of directors' meeting of Waverly, dated August 15, 1934.

(Said document, so offered and received in evidence, was marked Government's Exhibit 117.)

Mr. WILLIAMS: This is Waverly's authority to its officers to sign the agreement which is Exhibit No. 112.

I offer as Government's Exhibit 118 the minutes of directors' meeting of Benzoline, dated March 28, 1935.

467 (Said document, so offered and received in evidence, was marked Government's Exhibit 118.)

Mr. WILLIAMS: Benzoline in these minutes agrees to the request from Cab Sales to extend the payment of the principal notes. The officers are empowered to grant extensions of time, and to continue the reduction of the interest rate.

I offer as Government's Exhibit 119, minutes of directors' meeting of Chicago Yellow dated March 28, 1935.

(Said document, so offered and received in evidence, was marked Government's Exhibit 119.)

Mr. WILLIAMS: This is authority of Chicago Yellow to its subsidiary, Benzoline, to extend Cab Sales' notes and give it concession.

I offer as Government's Exhibit 120, minutes of directors' meeting of Benzoline, dated October 24, 1935.

(Said document, so offered and received in evidence, was marked Government's Exhibit 120.)

Mr. WILLIAMS: This is referring to further default
468 by Cab Sales, and an extension of time, and continue the 4 percent interest rate until April 30, 1938.

I offer as Government's Exhibit 121 a letter from the President of Cab Sales to Benzoline.

(Said document, so offered and received in evidence, was marked Government's Exhibit 121.)

Mr. WILLIAMS: This has reference to the same transaction as the previous Exhibit, 120, and is a request of Cab Sales for these concessions on the loan.

I offer as Government's Exhibit 122, minutes of directors' meeting of Benzoline, dated December 19, 1935.

(Said document, so offered and received in evidence, was marked Government's Exhibit 122.)

Mr. WILLIAMS: I call the Court's attention to the fact that Mr. Morris Markin was present at this meeting of Benzoline. This relates to payment to Chicago Yellow by Benzoline as a dividend of $200,000 worth of Cab Sales notes.

I offer as Government's Exhibit 123, minutes of
469 directors' meeting of Chicago Yellow, dated January 24, 1938.

(Said document, so offered and received in evidence, was marked Government's Exhibit 123.)

Mr. WILLIAMS: This deals, with some slight modifications, with the trust agreement with respect to Cab Sales' notes.

I wish to read the paragraph beginning at the bottom of page 211 of the excerpts.

> "The chairman thereupon presented proposed Supplemental Indentures dated as of January 3, 1938, between Cab Sales and Parts Corporation and The First National Bank of Chicago as Trustee, wherein it is provided that the maturity date of said Notes of Cab Sales and Parts Corporation, secured by both of the above mentioned Indentures, be extended to April 1, 1943, and the interest rate reduced to 3% per annum until maturity; and further providing that under the Indentures of May 1, 1931 (known as the Benzoline issue), Cab

Sales and Parts Corporation deposit the sum of $10,000.00 quarter annually into the sinking fund provided for in such Indenture in addition to interest; and that under the Indenture of October 1, 1932 (known as the Waverly issue), Cab Sales and Parts Corporation deposit the sum of $3,750.00 quarter-annually into the sinking fund provided for in such Indenture in addition to interest; and that the amounts so deposited be applied to the redemption of Notes outstanding under both such issues."

Then follows the resolution to carry out this change.

The minutes then ratify a similar resolution of Benzoline, on page 213 of the excerpts relate to opening the principal office of Chicago Yellow in New York City. At the top of page 214, the resolution relates to the investment of $249,000 in a new insurance company, the investment to be made by Chicago Yellow, whose minutes these are.

I offer as Government's Exhibit 124, waiver of notice of directors' meeting of Federated Enterprises, Inc., with attached agreement dated December 21, 1938, between Federated Cab Sales, Chicago Yellow and Benzoline.

(Said document, so offered and received in evidence, was marked Government's Exhibit 124.)

Mr. WILLIAMS: This relates to the stock of the then existing Cab Sales and Parts Corporation being acquired by a new corporation known as Federated Enterprises, and for authority to change its name thereafter to Cab Sales and Parts Corporation, now a defendant in this suit.

This particular exhibit relates to Cab Sales Notes and obligations to Chicago Yellow and Benzoline.

I offer as Government's Exhibit 125 a memorandum from Oakland to Freimark, dated February 6, 1939.

(Said document, so offered and received in evidence, was marked Government's Exhibit 125.)

Mr. WILLIAMS: It states:

"The Checker Cab stock which was formerly in the name of Federated Enterprises, Inc., and owned by Cab Sales & Parts Corporation, has now been transferred into the name of Cab Sales & Parts Corporation."

I offer as Government's Exhibit 126 minutes of directors' meeting of Cab Sales dated July 24th, 1942.

(Said document, so offered and received in evidence, was marked Government's Exhibit 126.)

Mr. WILLIAMS: This resolution was adopted that this corporation shall borrow from Chicago Yellow Cab Com-

pany, Inc., the sum of $100,000, and shall execute its instalment note payable to the order of Richard Clauson, bearing the date of July 4th, 1942.

Then it states the instalments in which the note will be paid over the period of the coming year.

A resolution was then passed to make this loan to Cab Sales.

The resolution was to borrow the money from Chicago Yellow.

I offer as Government's Exhibit 127, minutes of directors' meeting of Checker, dated July 29, 1942.

(Said document, so offered and received in evidence, was marked Government's Exhibit 127.)

Mr. WILLIAMS: The President informed the mem-
473 bers of the Board that Cab Sales and Parts Corporation had made a request for a loan from Checker Taxi Company in the sum of $181,650, said loan to be evidence by a demand note bearing interest at the rate of 3 percent per annum and secured by the pledge of the following securities:

Stock of General Transportation Casualty and Surety Company; some stock of Chicago Yellow, and certain bonds of Parmelee Transportation Company.

And the President stated to the Board in his opinion the value of the securities to be pledged to secure the payment of said loan is in excess of the amount of the loan requested.

A resolution was then made to approve the loan.

I offer as Government's Exhibit 128, minutes of directors' meeting of Checker, dated September 17, 1942.

(Said document, so offered and received in evidence, was marked Government's Exhibit 128.)

Mr. WILLIAMS: After the first paragraph on page 221:

"Upon motion duly made and seconded, the fol-
474 lowing resolution was unanimously adopted:

"RESOLVED that this Corporation sell to Cab Sales and Parts Corporation, an Illinois corporation, all of its furniture, fixtures, office and garage equipment for the sum of $23,000 in cash,"—

And the officers of the corporation authorized him to do that.

"The Secretary then presented to the meeting a proposed form of contract, effective October 1, 1942, expiring December 31, 1945, with Cab Sales and Parts Corporation, providing for the use of the taxicab licenses of this Corporation during said period for the sum of $15.00 per license per month as therein set forth."

A resolution to do that was then made by those present.

I offer as Government's Exhibit 129, plaintiff's Interrogatory No. 2, directed to Checker.

(Said document, so offered and received in evi-
475 dence, was marked Government's Exhibit 129.)

Mr. WILLIAMS: And I offer as Government's Exhibit 130, Checker's answer to plaintiff's Interrogatory No. 2.

(Said document, so offered and received in evidence, was marked Government's Exhibit 130.)

Mr. WILLIAMS: The interrogatory states:

"With respect to your denial of part of the allegations of paragraph 3(f) of the amended complaint, state:

(a) The number of motor vehicles suitable for use as taxicabs owned by you at the end of each calendar year from 1929 to 1946, inclusive;

(b) The number of motor vehicles suitable for use as taxicabs, to which you held title at the end of each calendar year from 1929 to 1946, inclusive;"

The answer to these two paragraphs are:

"(a) and (b). During the years 1929-1946 inclusive, Checker Taxi Company, an Illinois corporation, held title to all licensed cabs which were operated in the City of Chicago under the name 'Checker'."

476 No. (c) of the interrogatory is:

"(c) What property was owned by Checker directly and indirectly, on August 29, 1947, other than as interest in 1,000 taxicabs licenses issued to it by the City of Chicago;".

The answer is:

"(c) Checker's balance sheet as of August 31, 1947 shows the following assets. cash, $90,755.87; equipment, furniture, fixtures, etc. (1,000 taxicabs), $1,000; prepayments, $14,416.69. No material change in this balance sheet occurred between August 29, 1947 and August 31, 1947."

Part (d) of the interrogatory is:

"(d) Whether Checker ever acquired, either directly or indirectly, any of the assets of Checker Taxi Company, an Illinois corporation. If it did, state the dates they were acquired."

And the answer is:

"(d) Yes—on or about January 12, 1932."

I offer as Government's Exhibit 131 minutes of directors' meeting of Cab Sales, dated September 21, 1942.

477 (Said document, so offered and received in evidence, was marked Government's Exhibit 131.)

Mr. WILLIAMS: Beginning with the second paragraph:

"The Secretary then presented to the meeting a proposed form of contract with Checker Taxi Company relating to the leasing of 1,000 hack licenses in the City of Chicago for a period beginning October 1, 1942 and expiring December 31, 1945, for the consideration therein set forth.

"After due discussion of the terms and conditions of the proposed form of contract, the following resolutions were unanimously adopted:"

The resolution approved the agreement. The resolution also approves the purchase of the furniture, fixtures and garage equipment from Checker.

"The Secretary then presented to the meeting a proposal from Freimark & Co., a limited partnership, making an offer to purchase from this Corporation all of its stock holdings in Checker Taxi Company.

478 Upon motion duly made and seconded the following resolutions were unanimously adopted:"

• • •

"The undersigned, being the sole stockholder of Cab Sales and Parts Corporation does hereby consent to and authorize all transactions set forth in the foregoing minutes, including but without limitation, the sale of all the stock of Checker Taxi Company held by Cab Sales and Parts Corporation, pursuant to the offer of Freimark & Co. presented to the meeting."

And the undersigned is Morris Markin.

I offer as Government Exhibit 132 a letter from Sokol, President, Cab Sales, to the Internal Revenue Agent in Charge, Chicago, Illinois, dated September 26, 1945.

(Said document, so offered and received in evidence, was marked Government's Exhibit 132.)

479 Mr. LYNTON: Is it the Government's contention that this letter is a part of the conspiracy, this letter sent to the Internal Revenue Department?

Mr. WILLIAMS: It is the contention of the government that the material contained in the letter is a part of the conspiracy.

Mr. LYNTON: I make the same standing objection.

Mr. WILLIAMS: (Reading):

"As requested by you, we are pleased to give you the following information with respect to the sale by

us to Freimark & Co. in 1942 of our holdings in Checker Taxi Company:

"As you are no doubt aware, Mr. Morris Markin is the sole owner of all of the capital stock of our Company. Mr. Markin is also the President and principal stockholder of Checker Cab Manufacturing Corporation of Kalamazoo, Michigan. For many years he has had associated with him in his various business interests, Harry Freimark, his confidential financial representative George McDonald, operating manager of our Company and Checker Taxi Company, M. M.
480 Sokoll, principal executive of our Company and Checker Taxi Company, Julius Jesmer, attorney for his Chicago enterprises, Ralph E. Oakland, First Vice President and Treasurer of Checker Cab Manufacturing Corporation, and James A. King, Vice President and maintenance engineer of Checker Cab Manufacturing Corporation and its subsidiaries. All of these men have made substantial contributions to the success of Cab Sales and Parts Corporation and Checker Taxi Company, as well as other companies in which Mr. Markin is interested. For some years prior to 1942 it had been Mr. Markin's intention to give these men a participation of some kind in his taxicab enterprises. He finally concluded that this result could be best accomplished by letting these men purchase the controlling interest of Checker Taxi Company from Cab Sales and Parts Corporation at the fair value thereof, thereby making these men full associates in Mr. Markin's taxicab operations in Chicago. The purchase price was mutually agreed upon after tak-
481 ing into consideration the value of the physical assets, the rent to be received from the licenses, and the term of the franchise. The terms of this sale were such as to permit these men to pay the balance of the purchase price, after a substantial down payment, over a period of years out of the earnings of the enterprise.

"These men accordingly formed the limited partnership, Friemark & Co., as a vehicle to make the purchase, and the purchase was consummated in September, 1942.

"There were two principal reasons why the sale was made in the month of September, 1942. These were as follows:

"1. The fiscal year of our Company expired on September 30, 1942. That year, in view of an amend-

ment to the Internal Revenue Code, was the last year in which a capital loss could be deducted for tax purposes against operating income. This reason was an important, although not controlling, factor in determining the time at which the sale was to take place.

482 "2. Mr. Markin, as President of Checker Cab Manufacturing Corporation, in 1942 was converting the factory in Kalamazoo 100% to war work. This conversion program, added to the war contracts that Checker Cab Manufacturing Corporation had then obtained and expected to obtain, necessitated the devotion by Mr. Markin of most of his time in Kalamazoo to the affairs of Checker Cab Manufacturing Corporation (and its subsidiary, Parmelee Transportation Company) and made it necessary for him to devote a lesser portion of his time to the affairs of Checker Taxi Company and Cab Sales and Parts Corporation in their taxicab operations in Chicago.

"Mr. Markin accordingly concluded that 1942 was the best time during which his principal associates could be permitted to purchase on a deferred payment plan, a participation in his taxicab enterprises."

I offer as Government's Exhibit 133 Plaintiff's Interrogatory No. 21, directed to Markin.

(Said document, so offered and received in evidence, was marked Government's Exhibit 133.)

483 Mr. WILLIAMS: I offer as Government's Exhibit 134, Mr. Markin's answer to that interrogatory.

(Said document, so offered and received in evidence, was marked Government's Exhibit 134.)

Mr. WILLIAMS: The interrogatory reads:

"With respect to your denial of ownership of stock of Cab Sales, as alleged in paragraph 34 of the amended complaint, state each date that you acquired, directly or indirectly, and that you disposed of, directly and indirectly, stock in Cab Sales, the number of shares and the consideration involved in each transaction, and the sellers and buyers, respectively."

And Mr. Markin's answer is:

"As of December 31, 1934, Mr. Markin owned, directly or indirectly, an aggregate of 977 shares of stock of Cab Sales. Since December 31, 1934, acquisitions and disposals, directly and indirectly, of stock of Cab Sales by Mr. Markin were: (a) on September 5, 1935, a gift of 7 shares to Ralph E. Oakland; and

(b) on December 8, 1936, a purchase of 30 shares from Mr. Oakland. Since December 8, 1936, Mr. Markin
484 owned all the outstanding stock of Cab Sales. During the period December 7—31, 1938, the name of Cab Sales and Parts Corporation, an Illinois corporation, was Federate Enterprises, Inc. The consideration for each acquisition and disposal was cash except that the 7 shares transferred to Mr. Oakland on September 5, 1935, represented a gift."

I offer as Government's Exhibit 135 a letter dated November 3, 1937 from R. E. Oakland of CCM to Mike Sokoll, President of Checker.

(Said document, so offered and received in evidence, was marked Government's Exhibit 135.)

Mr. WILLIAMS: The letter states:

"I am returning herewith the certified copy of the minutes of October 22 and ask Harry Friemark to return the original to you for correction.

"It is evident that you misunderstood the purpose of the meeting. The meeting was simply to impower the officers of the corporation to execute an extension agreement between Checker Cab Manufacturing
485 Corporation and Cab Sales and Parts Corporation. This note was not discounted by Cab Sales and Parts Corporation but was given as collateral to the First National Bank on a loan to Checker Cab Manufacturing Corporation.

"Will you kindly either correct these minutes or have a new meeting in accordance with the above facts."

I offer as Government's Exhibit 136 a letter dated November 3, 1938 from R. E. Oakland of CCM to M. M. Sokoll of Checker.

(Said document, so offered and received in evidence, was marked Government's Exhibit 136.)

Mr. WILLIAMS: The letter reads:

"I don't think I told you yesterday that Yellow have now decided to have governors put on and Bieze is going to issue an order to Transportation Maintenance for this. I suggest that you likewise issue an order to them for your governors. In connection with this, I believe you have already had some discussion with Jack Tuttle with reference to putting automatic

chokes on one Unit which is now equipped with manual chokes. Of course, it will be necessary for you to know what to do, as there will be a different kind of fitting for the cabs which are equipped with the automatic chokes.

"Please let us know what your decision is so we can be governed accordingly."

I offer as Government's Exhibit 137 letter from Mr. Sokoll of Checker to Oakland of CCM.

Mr. LYNTON: If your Honor please, I think we are going to pass pretty soon from this ocean to another one, and I probably will have to make some more objections, and I am wondering how this last series of documents have any conceivable reference to the sale of cabs to these operating companies. It seems to me they are all small details which affect the operating companies without any reference whatever to the manufacturing company.

Mr. WILLIAMS: Does the court wish an explanation of that?

The COURT: Yes.

Mr. WILLIAMS: They relate to explaining the relationship between this company, and shows how the control comes down to Markin through each one of these companies. Now, the control extends to all kinds of details of their operations. We have some evidence that they controlled cabs here and there when they purchased them, but this evidence shows the entire picture of control of these cabs, and leads, we think, inevitably to the conclusion that the purchase of cabs by these companies is necessarily controlled by Mr. Markin and CCM.

Mr. LYNTON: You are not suggesting all these little details which are obviously operational indicate in some fashion that there is control over cabs?

Mr. WILLIAMS: We find, for example, in Exhibit 135 that Mr. Oakland of CCM is rather peremptorily giving instructions to Mr. Sokoll of Checker to correct the minutes to reflect what Mr. Oakland wished.

Mr. LYNTON: Who is the owner of Cab Sales?

Mr. WILLIAMS: Is ownership sufficient?

Mr. LYNTON: Who is the owner of Cab Sales?

Mr. WILLIAMS: The evidence has shown throughout here that Morris Markin was the owner.

Mr. LYNTON: At that time, Mr. Markin was. Don't you think it would be conceivable that he may have an

488 interest in these operational details?

Mr. Williams: We think that is a legal question. It may be that the defendants will raise the question that Mr. Markin did not actually control Cab Sales, that he owned it purely for investment purposes. If they are willing to concede that Mr. Markin had—

Mr. Lynton: We are not going to concede that.

Mr. Williams: That he did control the prchase of cabs, and required the purchase of cabs only from CCM.

The Court: You may state your objection on the record if you have any additional objection.

Mr. Lynton: That is part of the objection made before.

The Court: Your objection stands.

Mr. Williams: I believe I offered Government's Exhibit 137, which is a reply of Sokoll to the letter of Oakland dealing with Yellow, and putting on Governors, and asking that he do it.

(Said document, so offered and received in evidence, was marked Government's Exhibit 137.)

Mr. Williams: I will not read the reply.

489 I offer Government's Exhibit 138, a letter dated January 5, 1939, from Oakland to Sokoll of Checker.

(Said document, so offered and received in evidence, was marked Government's Exhibit 138.)

Mr. Williams: I will read the letter.

"Please arrange with Mr. Richardson to set up an estimated liability for Federal income taxes on the books of Cab Sales and Parts Corporation, before the assets and liabilities are transferred to Federated.

"I would also like to have the estimated income tax on Checker Taxi set up before their books are closed.

"When Mr. Richardson is ready to make these calculations, if you will notify me, I will come in to Chicago and check the calculations before the liability is set up and before the books of Cab Sales are closed, and the new books of Cab Sales, Illinois, are opened."

Mr. Williams: Mr. Hotchkiss will take care of the next few exhibits.

Mr. Hotchkiss: Next we come to a section dealing, in the over all sense, with Parmelee, CCM and

490 Markin dealings with reference to Chicago Yellow stock and Yellow and Chicago Yellow directors, and the relationship between the defendants and their affiliates, and between Yellow and Chicago Yellow, and between those companies and Benzoline.

Mr. LYNTON: Now, I will make objection to this document.

Mr. HOTCHKISS: I offer at this time Government's Exhibit No. 139, which is a chart showing certain corporate relationships between the defendant corporations, and between those corporations and Morris Markin.

(Said document, so offered and received in evidence, was marked Government's Exhibit 139.)

Mr. HOTCHKISS: The Government directed an interrogatory or request for admissions to Mr. Markin and Checker Cab Manufacturing Company with respect to this document, and there was no response by either of them to the request for admissions, as I recall.

Mr. LYNTON: You mean we did not admit it? We made no admissions with respect to your request.

491 Mr. HOTCHKISS: As I recall, you made no statement at all with respect to it.

Mr. LYNTON: Well, our objection with respect to this particular chart is this:

First, it is a chart which is prepared as of January 1, 1944, some fifteen years after the date of the alleged conspiracy. It relates to corporations, many of which were formed, and have no relation to the problem of the sale of cabs or anything of the sort. All the corporate relationships, the precise stockholdings of Mr. Markin in each one of these companies under consideration, have been alleged in the complaint and admitted in the answers of the respective defendants to the extent that they were accurate, and to the extent that they were inaccurate, accurate statements were supplied. In addition to that, accurate statements are all supplied in the answers to the interrogatories. There were some pencil notations on the chart which we are advised were made even after 1944. We submit that the situation which is indicated on that chart adds nothing to this case, and perhaps might be confusing, because it does not indicate the manner in which these companies came into being or what their purpose was.

492 The COURT: Well, an accurate chart may be helpful to the court, to have it before it visually instead of referring to all the different exhibits, and so forth. So you make a point about the pencilled notations here?

Mr. LYNTON: The only point I make on that, your Honor, is that I do not want the record to indicate that these pencilled notations reflect the situation as of the date of the

chart. They reflect the situation as of a somewhat later date. And the point of my objection is that I can, of course, appreciate it is visually easier to have a picture in chart form, but the point is we deem the chart has no relationship to the sequence.

The Court: Well, does the government make a representation as to the time?

Mr. Hotchkiss: Your Honor, the government submits the chart, that is in its printed form, as to the corporate relationships existing at that date in 1944. Now, as to the pencilled notations, the government will, when it starts calling witnesses, produce witnesses who will testify to the fact that Mr. Oakland, the Vice President of Checker Cab Manufacturing Company, inserted those pencilled
493 notations on that chart to bring the record of the stock holdings up to date.

The Court: To what date?

Mr. Hotchkiss: As of the date in the early part of 1946. If my recollection serves me right, that is when the investigation was being conducted at the offices of the Checker Cab Manufacturing Company. So I would suggest that the matter of the admissibility of the chart, in so far as the pencilled notations are concerned, be reserved until we produce oral testimony, unless counsel is willing to stipulate on that point.

Mr. Lynton: I am not raising objection to the pencilled notations, your Honor, so long as it is noted in the record that these pencil notations reflect the situation as of the early part of 1946. My objection is that the entire chart reflects a situation which is not germane to the development of the complaint.

The Court: Well, it may be helpful to the court. It will be received.

(Said document, so offered and received in evidence, was marked Government's Exhibit 139.)

494 Mr. Hotchkiss: Next I offer Government's Exhibit 140, consisting of the minutes of directors' meeting of Chicago Yellow, held on May 13, 1930.

(Said document, so offered and received in evidence, was marked Government's Exhibit 140.)

Mr. Hotchkiss: Mr. Moore was chairman of the meeting. You have an objection?

Mr. Lynton: Yes, I have the same objection to this series of documents.

Mr. Hotchkiss: Very well.

Mr. LYNCH: This series of documents apparently relates to some financial transactions which I think have no bearing upon the problem of sales whatever, therefore I object to them as immaterial and irrelevant.

Mr. HOTCHKISS: The government submits that the documents will be shown to have a very vital bearing on the question of sales of cabs.

The COURT: Well, the Court will receive it subject to being connected up later.

Mr. LYNCH: For the record, may I have the record show my standing objection to the entire series until I indicate to the contrary?

The COURT: You may.

495 Mr. HOTCHKISS: Mr. Moore acted as chairman and stated that as to the Yellow Cab Company, the stock, all of it, was owned by this corporation, meaning Chicago Yellow.

I am not quoting now, but he further stated that the Benzoline stock was all owned by Chicago Yellow.

I next offer Government's Exhibit 141, consisting of a letter from John E. Merz, Assistant Manager, Motor Equipment Manufacturers' Association, to Oakland, Vice President of CCM, dated November 9, 1932.

(Said document, so offered and received in evidence, was marked Government's Exhibit 141.)

Mr. HOTCHKISS: And I quote only a part of the last paragraph:

"We would also appreciate your advising us where the control of Yellow Cab lies."

I offer Government's Exhibit 142, dated November 10, 1932, consisting of a letter from Oakland, Vice President of CCM, in response to the foregoing exhibit.

(Said document, so offered and received in evidence, was marked Government's Exhibit 142.)

496 Mr. HOTCHKISS: And I read now the last paragraph:

"The Yellow Cab Company of Chicago is controlled by the Parmelee Transportation Company, which, in turn, is controlled by Checker Cab Manufacturing Corporation."

Mr. HOTCHKISS: Next, I offer Government's Exhibit 143, consisting of a letter dated February 22, 1935, from E. J. Thelin to Thomas B. Hogan of Chicago Yellow.

(Said document, so offered and received in evidence, was marked Government's Exhibit 143.)

Mr. Hotchkiss: The second paragraph at the end of the excerpt on page 228 reads:

"I also note in the Chicago Tribune under date of Feb. 12th a report made to the Securities and Exchange Commission in Washington by the Waverly Corporation that they owned 127,708 shares of Chicago Yellow Cab Company stock after buying 105 in January.

Then he asks for information of the status of Waverly.

497 I now offer Government's Exhibit 144, which is Hogan's response to that letter.

(Said document, so offered and received in evidence, was marked Government's Exhibit 144.)

Mr. Hotchkiss: Mr. Hogan states:

"Yellow Cab Company, which is one of the subsidiaries of Chicago Yellow Cab Company, Inc., and wholly owned by it, is the owner of 12,600 shares of the 7% preferred stock of The Waverly Corporation out of a total outstanding of 13,000 shares."

He goes on to state that Waverly is purely an investment corporation, and says:

"In addition to the preferred stock above mentioned owned by Yellow Cab Company, the Yellow Cab Company owns 10,000 shares of common stock of The Waverly Corporation which is one-half of the total outstanding voting stock of the corporation and for your information may I add that the present officers of The Waverly Corporation consist of three individuals all of whom are directors of Yellow Cab Company and these three officers also constitute the entire Board of Directors of The Waverly Corporation."

498 Mr. Hotchkiss: I offer Government's Exhibit 145, consisting of minutes of directors' meeting of Yellow, dated December 21, 1931.

(Said document, so offered and received in evidence, was marked Government's Exhibit 145.)

Mr. Hotchkiss: The Chairman was Arthur W. Moore.

"The Chairman stated that this corporation had heretofore purchased and now owns 61,565 shares of the capital stock without par value of Chicago Yellow Cab Company, Inc., a New York corporation, for which it had paid in the aggregate the sum of $1,566,330.82, * * *."

"The Chairman further stated that this corporation has a surplus in excess of $5,000,000.00, * * *."

Then, on page 231?

"The Chairman stated that The Waverly Corporation, a Delaware corporation, had offered to purchase from this corporation on or before December 24, 1931, 60,000 shares of the capital stock, without par value, of Chicago Yellow Cab Company, Inc., owned
499 by this corporation, for cash, at the price of $10 per share, * * *"

That request was approved by the Board.

I offer Government's Exhibit 146, being minutes of directors' meeting of Yellow, dated June 17, 1932.

(Said document, so offered and received in evidence, was marked Government's Exhibit 146.)

"There were present:

Ernest H. Miller, Benjamin Samuels, Thomas B. Hogan, Arthur W. Moore, S. H. Kesner, Edward N. D'Ancona constituting a majority and quorum of the directors of the corporation."

"Mr. Miller stated that he thought it possible that the Waverly Corporation would, in addition to its present holdings, buy up to 50,000 shares of the capital stock of Chicago Yellow Cab Company, Inc., at $7.00 per share, and that approximately $400,000 would be required for this purpose, * * *"

Then there was a discussion as to how this $400,000 could be raised, and the directors approved
500 Waverly's purchasing it by either increasing its capital stock or by this corporation, that is, Yellow, loaning the necessary $400,000 to Waverly to enable it to buy Chicago Yellow stock, and it was further resolved that the decision as to which method of financing should be employed, should be in the hands of Mr. Miller.

I offer Government's Exhibit 147, consisting of letter from S. G. Morse, Trust Officer of Continental Illinois National Bank and Trust Company to Dudley F. Jessopp, dated February 21, 1944.

(Said document, so offered and received in evidence, was marked Government's Exhibit 147.)

Mr. Hotchkiss: Government's Exhibit 147 refers to a previous letter of February 4, and the request for the names of stockholders who held ten percent or more of the stock in Chicago Yellow at the last dividend disbursing period for the years 1929 to 1934, and then the names of those stockholders are listed, and I will call attention only to the last one listed on December 1, 1934. On that date

The Waverly Corporation is listed as owning 125,955
501 shares of Chicago Yellow stock.

I also call attention to the fact that in the middle of that series there is a Fayette F. Parsons listed as owning 50,118 shares on December 1, 1931.

I offer Government's Exhibit 148, consisting of a letter from R. H. Bieze, Treasurer of Yellow, to Philip M. Riesterer of First National Bank of Chicago, dated July 31, 1931.

(Said document, so offered and received in evidence, was marked Government's Exhibit 148.)

Mr. Hotchkiss: This explains the status of Fayette Parsons as being a nominee of Yellow and holding the stock for Yellow.

Next we come to a series of documents dealing with:

"The Establishment by Parmelee and Waverly of a voting trust to control Chicago Yellow stock and the acquisition by Markin (through Miller) of a stock interest in Waverly."

I next offer Government's Exhibit 149, being minutes of directors' meeting of Parmelee, dated November 22, 1932.

502 (Said document, so offered and received in evidence, was marked Government's Exhibit 149.)

Mr. Hotchkiss: There were present E. S. Higgins, Paul G. L'Amoreaux, and Levin Rank.

There was some discussion of the renewal of the management contract between Transportation Management and Yellow. Then Mr. L'Amoreaux goes on to state:

"* * * but that as a condition to such renewal Yellow Cab Company had insisted that Mr. Ernest H. Miller be re-employed by The Transportation Management Corporation for the purpose of supervising the performance of the management services. Mr. Miller had agreed to become re-employed by The Transportation Management Corporation for such purpose, provided Yellow Cab Company offered him some inducement for so doing, and Yellow Cab Company had agreed to sell to him a substantial stock interest in The Waverly Corporation, which in turn owned a large number of shares of the stock of Chicago Yellow Cab Company, Inc. He further stated that, beneficial as the Man-
503 agement Contract was to this Corporation, he felt that it would be necessary for, and of great value to, this Corporation to join with The Waverly Corporation for the purpose of jointly voting the respective

shares of stock held by this Corporation and The Waverly Corporation in Chicago Yellow Cab Company, Inc., and to that end it was proposed to place such stock in a voting trust, in which Mr. Miller was to be one Voting Trustee, a representative of this Corporation one Voting Trustee, and an impartial individual satisfactory to all parties to be the third Voting Trustee. He pointed out to the Board of Directors that if such a voting trust was formed this Corporation would exercise through its Voting Trustee control over approximately 45% of the outstanding stock of Chicago Yellow Cab Company, Inc. jointly with the other Voting Trustees, which he considered of great benefit to this Corporation in preserving its operation policies and equities in the City of Chicago. * * *"

504 The Board then approved that, and then resolved that Mr. Levin Rank be designated as the voting trustee by Parmelee.

I offer Government's Exhibit 150, consisting of minutes of directors' meeting of CCM, dated November 28, 1932.

(Said document, so offered and received in evidence, was marked Government's Exhibit 150.)

Mr. HOTCHKISS:

"Mr. Markin, President of the Corporation, called the meeting to order and presided thereat."

A resolution was passed and referred to on page 236.

"The Chairman then stated that this Corporation held in excess of 51% of the outstanding capital stock of Parmelee Transportation Company and that the executives of Parmelee Transportation Company had requested this Corporation, as majority stockholder of said company, to authorize the transfer to Voting Trustees by said company of its stockholdings in Chicago Yellow Cab Company, Inc., * * *"

Then going further on the page:

505 The Chairman "then stated that according to his information said company was joining with another holder of a substantial block of stock in Chicago Yellow Cab Company, Inc., in the formation of a Voting Trust in order that the stockholdings of said company and said other large stockholder could be voted in concert for their mutual benefit and for the benefit of Chicago Yellow Cab Company, Inc., and that upon the formation of such Voting Trust the Voting Trustees would hold approximately 45% of the outstanding stock of Chicago Yellow Cab Company, Inc."

And then the Board approved this proposal.

I offer Government's Exhibit 151, consisting of a letter from Markin, President of CCM, to the Board of Directors of Parmelee, dated November 30, 1932.

(Said document, so offered and received in evidence, was marked Government's Exhibit 151.)

Mr. Hotchkiss: I offer Government's Exhibit 152, being the minutes of directors' meeting of Yellow, dated January 19, 1933.

506 (Said document, so offered and received in evidence, was marked Government's Exhibit 152.)

Mr. Hotchkiss: There is a reference to the fact of the death of Ernest H. Miller.

Then there is a discussion of the capitalization of Waverly, and a discussion with reference to contract under which Miller had agreed to purchase 10,000 shares of Class A stock of Waverly for the sum of $25,000.

Then, on page 239:

> "Now Therefore, Be It Resolved that the President or Vice President and the Secretary or Assistant Secretary of this corporation be and they are hereby authorized to approve an assignment of said contract by the Executrix under the Will of Ernest H. Miller and by such other persons as may properly join in such assignment, to such person or persons as the President of this corporation may approve . . ."

It goes on to state the reasons for that, and that is then approved.

Mr. Lynton: Will you stipulate at this time that
507 the voting trust which was mentioned in the last series of documents was never even executed and never came into existence?

Mr. Hotchkiss: I don't think it is relevant.

Mr. Lynton: Do you object to the stipulation on the ground of its relevancy?

Mr. Hotchkiss: Yes.

Mr. Lynton: Would you stipulate to the fact, subject to his Honor's ruling on the question of relevancy?

Mr. Hotchkiss: If you state as a fact the voting trust never came into being.

Mr. Lynton: That is right, the document was not even executed.

Mr. Hotchkiss: Very well. I will stipulate to it.

Next I offer Government's Exhibit 153, consisting of a letter from Paul L'Amoreaux to Samuel of Yellow, dated January 17, 1933.

508 Mr. LYNTON: In this respect we have a problem of confidential communication, and I should like to note for the record that Mr. L'Amoreaux was at that time counsel and, therefore, that defendant Yellow objects to this letter on the basis of confidential communication.

The COURT: Was this letter obtained together with the whole group?

Mr. HOTCHKISS: Yes, this was. However, with respect to this letter I would certainly say that on the face of it, it shows it is simply a business communication and not a legal matter.

Mr. LYNTON: I do not agree with that at all.

The COURT: Was it obtained under the same circumstances as that of Government's Exhibit 25 was obtained?

Mr. HOTCHKISS: That is right.

The COURT: Simultaneously, and contained in the same group of exhibits?

Mr. HOTCHKISS: In the same series, that is right, yes.

The COURT: The court's ruling is the same.

Mr. LYNTON: Yes. I want the objection noted.

The COURT: Yes.

509 (Said document, so offered and received in evidence, was marked Government's Exhibit 153.)

Mr. HOTCHKISS: The letter Government's Exhibit 153, reads:

"My dear Ben:

I am attaching hereto the following:

1—Letter from Mr. Markin to Yellow Cab Company offering to take over the Miller position.

2—Form of suggested letter from Yellow Cab Company to Mr. Markin accepting the offer.

3—Draft of suggested minutes for the Yellow Cab Company meeting.

4—Letter from Mr. Markin to Yellow Cab Company setting forth the manner in which the stock of The Waverly Corporation is to be issued."

Then there are certain other details.

I offer Government's Exhibit 154, consisting of a letter agreement between Markin and Yellow with Hogan signing for Yellow, and approved on behalf of Chicago Yellow by Samuels.

510 (Said document, so offered and received in evidence, was marked Government's Exhibit 154.)

Mr. HOTCHKISS: Exhibit 154 approves this novation of position, and I refer now to the top of page 241:

"In effecting this novation we have been actuated by the desire to preserve the very excellent management which The Transportation Management Corporation and its principal executives have given us for over three years, and in reliance of your agreement that you will cause this management to be continued as efficiently as we believe it would have been continued with the association of Mr. Ernest H. Miller. We realize that this will entail, on the part of these executives as well as on your part, substantially more time and effort being spent upon our affairs, and in order to preserve the benefits of such management and to prevent interests indifferent or unfriendly to the success of our company from acquiring a voice in its affairs, we are ready and willing, and do hereby agree to sell to you and your
511 associates the 10,000 shares of Class A Stock of The Waverly Corporation, * * * "

I offer Government's Exhibit 155, consisting of letter dated January 21, 1933 from Markin to Yellow, in which Markin gives instructions with respect to the issuance of the shares of stock of Waverly and how they are to be issued.

(Said document, so offered and received in evidence, was marked Government's Exhibit 155.)

Mr. Horchkiss: I offer Government's Exhibit 156, consisting of letter from Samuels to Markin dated January 30, 1933, acknowledging those instructions and advising Markin as to compliance with them.

(Said document, so offered and received in evidence, was marked Government's Exhibit 156.)

Mr. Horchkiss: I offer Government's Exhibit 157, consisting of minutes of Directors' Meeting of Parmelee, dated April 5, 1933.

(Said document, so offered and received in evidence, was marked Government's Exhibit 157.)

Mr. Horchkiss: (Reading)

512 "Present: Paul C. L'Amoreaux, Levin Rank, E. S. Higgins, James A. Doherty, being a majority of the Board of Directors and a quorum.

"Mr. L'Amoreaux, Chairman of the Executive Committee, called the meeting to order and acted as Chairman thereof. Mr. Rank, Secretary of the Corporation, acted as Secretary of the meeting and kept the minutes thereof.

"The Chairman then suggested that the Board of Directors consider the disposition of part of the stock

holdings of this Corporation in Chicago Yellow Cab Company, Inc. to obtain vitally necessary additional working capital for certain of the operating subsidiaries of this Corporation."

Then the directors approved the sale of not more than 50,000 of Parmelee's shares of stock in Chicago Yellow and then, referring now to the top of page 144, the same exhibit, providing for the securing for this corporation an option to repurchase these shares.

I offer Government's Exhibit 158, consisting of Minutes of Directors' Meeting of Yellow, dated April 6, 1933.

513 (Said document, so offered and received in evidence, was marked Government's Exhibit 158.)

Mr. Hotchkiss: Mr. Hogan was the Chairman of the meeting, and he there announced that Yellow had an opportunity to purchase, 35,000 shares of the capital stock of the Chicago Yellow Cab Company.

Then the Board resolved to borrow $250,000 for the purpose of making this investment and buying this stock.

I next offer Government's Exhibit 159, consisting of Minutes of Directors' Meeting of Parmelee, dated June 20, 1933.

(Said document, so offered and received in evidence, was marked Government's Exhibit 159.)

Mr. Hotchkiss: In Government's Exhibit 159, the Board authorized the President and Treasurer to sell from time to time up to 25,000 shares of the capital stock of Chicago Yellow owned by Parmelee.

Next I offer Government's Exhibit 160, consisting of Minutes of Directors' Meeting of Yellow, dated June 22, 1933.

514 (Said document, so offered and received in evidence, was marked Government's Exhibit 160.)

Mr. Hotchkiss: In Government's Exhibit 160, Yellow takes up the question of buying 25,000 shares of Chicago Yellow stock referred to in the option agreement.

I offer Government's Exhibit 161, consisting of letter from Markin to Samuels, dated June 3, 1933.

(Said document, so offered and received in evidence, was marked Government's Exhibit 161.)

Mr. Hotchkiss: In this letter, Markin says:

"I understand that at the last meeting you authorized the purchase from Parmelee Transportation Company of 10,000 additional shares of Chicago Yellow Cab Company, Inc. stock, and at the same time approved the agreement giving Parmelee the right to repurchase

both blocks, a total of 35,000 shares, at $7.50 per share on or before December 31, 1933.

"Will you kindly send me a copy of the minutes and a letter of confirmation addressed to Mr. Rank."

515 I offer Government's Exhibit 162, a letter from Rank, Treasurer of TMC, to Samuels of Yellow, dated July 14, 1933.

(Said document, so offered and received in evidence, was marked Government's Exhibit 162.)

Mr. Hotchkiss: In Government's Exhibit 162 there is discussion of a slight change in the terms of the option agreement to give Parmelee the right to repurchase all or any part of the 35,000 shares of stock referred to as having been sold to Parmelee.

I offer Government's Exhibit 163, consisting of a letter from Samuels to Kirkland, Fleming, Green & Martin, dated July 17, 1933, to which Defendants assert the attorney-client privilege.

Mr. Lynch: This is another instance of the category of Exhibit 25 and, in addition to all the standing objections, I object on behalf of the defendant Yellow on the ground that it is a privileged communication.

The Court: Objection overruled.

(Said document, so offered and received in evidence, was marked Government's Exhibit 163.)

516 Mr. Hotchkiss: This exhibit, No. 163, is simply a letter from Samuels to Kirkland, Fleming, stating it is immaterial so far as Yellow Cab is concerned whether the Parmelee's option to repurchase is to cover 2,000 shares at a time or the full 35,000.

I offer Government's Exhibit 164, consisting of Minutes of Directors' Meeting of Yellow, dated March 31, 1934.

(Said document, so offered and received in evidence, was marked Government's Exhibit 164.)

Mr. Hotchkiss: Reading from Government's Exhibit 164:

"The discussion in reference to the purchase of the 23,730 shares of capital stock of Chicago Yellow Cab Company, Inc. was resumed."

And then it was resolved that the officers were authorized to consummate the purchase.

The Court: The court will adjourn at this time.

(Whereupon the further trial of the above entitled case was adjourned until 10 o'clock a. m. of the following day, Thursday, May 20, 1948.)

517 No. 46 C 1339

UNITED STATES OF AMERICA, PLAINTIFF,

vs.

YELLOW CAB COMPANY, *et al.*, DEFENDANTS.

Before Judge LaBuy

Thursday, May 20, 1948,
10 o'clock a. m.

Court met pursuant to adjournment.

Present:

Mr. Hotchkiss
Mr. Williams
Mr. Lynton
Mr. Ginsberg
Mr. Fuller
Mr. Climenko

The CLERK: The case on trial.

The COURT: Proceed, please.

Mr. HOTCHKISS: I offer now Government's Exhibit 165, consisting of a letter dated August 1, 1933 from Samuels, Vice President of Yellow, to Parmelee.

Mr. LYNTON: Before you proceed to this offer, I had understood that the government had made a conces-
518 sion as to the stipulation which I requested with respect to the business depression. Will you announce it at this point?

Mr. HOTCHKISS: Yes.

Mr. WILLIAMS: The government will stipulate that there was a depression in the United States which started approximately in October of 1929 and lasted at least through the period of the bank holidays and the moratoria in the early part of 1933, but the government does not stipulate as to the effect of this depression upon any of the defendants or their affiliate companies.

Mr. LYNTON: Now, with respect to this series of documents commencing with the proposed Exhibit No. 165, the defendants object on the ground of relevancy and materiality, and in part, the defendants' objections are based on this. These documents relate to the operations in the city of Chicago of the cabs of Yellow and the cabs licensed to Checker. They also relate to certain financing of a temporary nature because of the then present lack of sufficient working capital from the standpoint of the directors of Parmelee. There is no indication thus far in the rec-

ord, nor in the record to come so far as we see of any relevance between this situation and the charges of
519 the complaint. Reducing it to its essentials, the defendants' point is that this is purely and entirely a local matter and has no relationship to the alleged restraints on interstate commerce.

The Court: The ruling of the court will be the same as to the introduction of all the other exhibits.

(Said document, so offered and received in evidence, was marked Government's Exhibit 165.)

Mr. Hotchkiss: I read from this exhibit, from Samuels to Parmelee:

"As you undoubtedly are aware, for over a year the taxicab situation in Chicago has been in a turmoil, due to uncertain legislative conditions, which has brought about a thorough investigation of all the companies operating taxicabs in Chicago and which investigation has recently been renewed through a new Commission appointed as a result of the passage of an ordinance the end of June, 1933. The new Commission has organized and is at present making a second
520 thorough investigation of the taxicab situation and all of the companies which are operating taxicabs in Chicago.

"The thing from which we have suffered in the last year or so has been considerable newspaper criticism to the effect that there is a taxicab monopoly in Chicago and that this taxicab monopoly is in some way connected with a gigantic taxicab monopoly spreading over the entire country and that the so-called Parmelee System is in effect in control of the operation of Yellow Cab Co. in Chicago.

"Of course, your company knows, as well as we do, that there is no such control over the actions of Yellow Cab Co. but we are constantly being criticized in the newspapers and, of course, that is due to the fact that your company has been a large stockholder of Chicago Yellow Cab Co. Inc."

Then he goes on to recite a discussion with respect to the sale by Parmelee to Yellow of certain shares of stock in the preceding year, that sale having been made with the option in Parmelee to repurchase. And it continues:

521 "Thus, your holdings in Chicago Yellow Cab Co. Inc., as I understand it, would be reduced to approximately 40,000 shares with the pending contracts completed.

"As the result of this recent legislation on rates, we have been compelled to reduce our rate to a basis which may result in Yellow Cab Co. being compelled to operate at a loss for some considerable length of time and if we can manage to divorce ourselves from Parmelee in truth and in fact, this may be the means of convicing the legislative authorities in Chicago that the criticism heretofore made is unjustified.

"In view of the situation and inasmuch as your company has at all times co-operated with us and we know that you are convinced that we have at all times co-operated with your company, we feel that it will be best for both companies if some arrangement could be made whereby the option agreements heretofore in existence would be cancelled, with reference to the 35,000
522 shares above mentioned, and a contract entered into whereby we would be enabled to purchase all of the remaining interest which your company now holds in the stock of Chicago Yellow Cab Co. Inc."

And then the matter of the determination of the rates, and the conclusion:

"Would you be good enough to submit this matter to your Board, so that we may be able to determine whether or not an arrangement along the lines as indicated in this letter might be effected."

523 Next I offer Government's Exhibit 166, consisting of minutes of directors' meeting of Yellow, dated August 3, 1933.

(Said document, so offered and received in evidence, was marked Government's Exhibit 166.)

"The following directors were present:

Thomas B. Hogan, Benjamin Samuels, Frank Fulton, Joseph J. White, S. H. Kesner, Paul E. Keller, R. H. Bieze

constituting the entire Board of Directors.

"Mr. Thomas B. Hogan, President of the company acted as chairman of the meeting, and Mr. R. H. Bieze, Secretary of the company, acted as secretary of the meeting."

They discussed this proposed transaction whereby Yellow proposes that Parmelee's option to repurchase certain stock which had been sold to Yellow be canceled and that Yellow buy up Parmelee's remaining holdings in Chicago Yellow stock, and the Board approves taking action along that line and concludes, at the bottom of page 251 of the excerpts:

524 "Resolved that this corporation borrow not to exceed $400,000.00 for the purpose of making the investment in the capital stock of Chicago Yellow Cab Company, Inc. hereinabove authorized, * * *"

The next, starting with page 252, deals with the Parmelee Board of Directors' approval of the Yellow proposal.

I offer Government's Exhibit 167, consisting of minutes of directors' meeting of Parmelee, dated August 3, 1933.

(Said document, so offered and received in evidence, was marked Government's Exhibit 167.)

Mr. Hotchkiss: The Chairman brought to the attention of the Board the proposal which had been made by Yellow through Mr. Samuels, its Vice-President, and he went on to say, toward the early part of that first long paragraph:

"The Chairman then pointed out to the directors that the Corporation had very little working capital, that the situation in Chicago was sufficiently uncertain both politically and economically as, in his opinion, to cause such stock holdings to be of an extremely
525 speculative character because of recent reductions in rate, * * *"

Then he proposed that this offer be accepted and—

Mr. Lynton: Before you finish that particular sentence, will you finish the balance of it, particular with reference to the New Jersey Fidelity & Plate Glass Insurance Company?

Mr. Hotchkiss: Certainly.

"that this Corporation would be required to pay on October 1, 1933, some $90,000 in interest on its Debentures and to pay substantial amounts in the near future under its indemnity agreements on outstanding public liability claims brought against its subsidiaries in view of the fact that funds to pay such claims had been tied up in the liquidation of New Jersey Fidelity & Plate Glass Insurance Company, and that it was impossible to sell any substantial amount of these stock holdings in the open market."

Then, at the conclusion, a resolution was approved, that the corporation sell its stock holdings in Chicago Yellow to Yellow, and that the option arrangements then out-
526 standing to permit Parmelee to purchase its stock be canceled.

I offer Government's Exhibit 168, consisting of a letter dated August 2, 1933, from Keehn, Poust & Keeley to Yellow.

Mr. LYNTON: In addition to all the standing objections, there is a specific objection on the basis of competency. There is no authentication with respect to this and in particular, this particular firm of attorneys we do not concede were the attorneys for CCM at that time.

During the period August 2 to about August 13, 1933, there was a dispute between two factions within CCM. Mr. Markin during this particular period of time was ousted as President and General Manager of the corporation and so far as CCM and the defendant Markin are concerned, this letter has no binding effect whatever and, of course, it is hearsay from the point of view of this trial.

Mr. HOTCHKISS: Will you stipulate as to who the firm of Keehn, Poust & Keeley did represent at that time or purported to represent?

Mr. LYNTON: I will not, because I do not know.

The COURT: The Court will allow it to go in subject to connecting it up and making it relevant and competent.

527 Mr. LYNTON: May we, with respect to the question of competency, have a stipulation from the Government that during the period August 2, 1933, to August 13, 1933, Mr. Markin was neither general manager nor president of CCM?

Mr. HOTCHKISS: August 2 to August 13?

Mr. LYNTON: That is right, a period of eleven days approximately.

Mr. HOTCHKISS: If that is a fact we will so stipulate.

Mr. LYNTON: That is right. This letter is as of a date after Mr. Markin ceased to act in the capacities mentioned.

Mr. Hotchkiss: Very well.

Mr. LYNTON: And the Government offers no proof with respect to who is the firm of Keehn, Poust & Keeley, or for whom they acted?

Mr. HOTCHKISS: Very well.

Mr. LYNTON: And you nevertheless offer this letter.

Mr. HOTCHKISS: We offer this letter.

(Said document, so offered and received in evidence, was marked Government's Exhibit 168.)

Mr. HOTCHKISS:

528 "Please take notice that I have been advised that you contemplate the purchase of some 40,000 or 50,000 shares of the stock of the Chicago Yellow Cab Company from The Parmelee Company.

"This is to advise you that my client, the Checker Manufacturing Company, is the majority stockholder

of The Parmelee Company and that as such majority stockholder it objects to the sale by The Parmelee Company of said shares of stock.

"A demand is being served upon the Board of Directors of The Parmelee Company that it not authorize the sale of such shares of stock.

"It is the opinion of my client as majority stockholder that the Board of Directors of Parmelee may disregard their duty as representatives and trustees for the stockholders of The Parmelee Company and disregard the demand not to authorize the sale of such stock.

"This is to notify you that in the event such sale is authorized by the Board of Directors or is made
529 by the officers of The Parmelee Company, action will be taken either to enjoin said sale, or set the same aside.

"This is further to advise you that such action as may be necessary and proper will be instituted against you for the purpose of preventing such purchase by you, or setting the same aside if the same is accomplished.

"Copy to Kirkland, Fleming, Green & Martin Counsel for Yellow Cab Company."

I now offer Government's Exhibit 169, consisting of a letter from Samuels, Vice-President of Yellow, to Parmelee, dated August 22, 1933.

(Said document, so offered and received in evidence, was marked Government's Exhibit 169.)

Mr. Hotchkiss:

"We are again writing you in reference to the proposed purchase by the Yellow Cab Company of Chicago of the remaining shares of stock of Chicago Yellow Cab Company, Inc., owned by your company. You will recall that we heretofore advised you that our
530 Board adopted certain resolutions, the purport of which we communicated to you.

"We understood that your company had taken action in regard to the matter authorizing the sale and delivery of the stock in accordance with the same terms as those covered by our transaction and we of course cannot understand why there has been a delay in the completion of the delivery of the stock to us.

"We again call your attention to the fact that the taxicab situation in Chicago is now being thoroughly

investigated by the new Public Vehicle License Commission and practically at every meeting of the Commission the question of domination of the action of our company by the Parmelee Transportation Company is mentioned by some person. In fact, at one of the recent meetings a complete chart was introduced as evidence by the representatives of the so-called Stickers Club, an organization of striking Checker Taxi Company drivers showing what purported to be the interlocking hook-up between the various com-
531 panies and particularly the Parmelee Transportation Company with the Yellow Cab Company.

"Of course we all realize that there is no such control over the action of Yellow Cab Company but those men constitute the opposition together with the newspaper backing which they have received which makes it easy for them to stick to the wildest sort of statements not necessarily backed up by facts and all of this goes into the record as real evidence. You will, of course, appreciate therefore the necessity, once and for all, of putting a stop to this type of propaganda which would result if we could go before this Commission and state once and for all that Parmelee Transportation Company is no longer a stock holder of Chicago Yellow Cab Company, Inc.

"Will you therefore give this matter your immediate consideration so that the transaction as outlined in the minutes of the respective Boards may be completed without any further delay."

I offer Government's Exhibit 170, being minutes of
532 meeting of Executive Committee of CCM, dated December 21, 1933.

(Said document, so offered and received in evidence, was marked Government's Exhibit 170.)

Mr. HOTCHKISS:

"There were present at the meeting:

W. B. Beal, Morris Markin, L. B. Manning being all of the members of the Executive Committee; also S. S. Pruitt, Secretary of the corporation. Mr. Beal acted as chairman and Mr. Pruitt as Secretary of the meeting.

"Mr. Markin explained that he had negotiated with the Chicago Yellow Cab Company, Inc. to repurchase 25,000 shares of capital stock of said Chicago Yellow Cab Company, Inc. upon which the Parmelee Trans-

portation Company had an option; that in order to exercise said option which would seem advantageous to Parmelee Transportation Company it would be necessary for this corporation to advance to the Parmelee Transportation Company $197,500; that resolution should be adopted at this time authorizing such advance."

Then a resolution was adopted approving
533 such loan to Parmelee.

I offer Government's Exhibit 171, consisting of letter from Rank, Treasurer of Parmelee, to CCM, dated December 28, 1933.

(Said document, so offered and received in evidence, was marked Government's Exhibit 171.)

Mr. Hotchkiss: I might comment that the letterhead shows the address as Jersey City, New Jersey.

"Referring to the loan of $197,500 proposed to be made by you to us, you are hereby directed to pay said sum for our account to Yellow Cab Company, Chicago, Illinois.

"On the understanding that such payment has been or is about to be made, simultaneously with the execution and delivery of this letter, we enclose herewith our promissory note to evidence said loan in the face amount of $197,500."

I offer Government's Exhibit 172, consisting of minutes of directors' meeting of Yellow, dated December 21, 1933.

(Said document, so offered and received in evi-
534 dence, was marked Government's Exhibit 172.)

Mr. Hotchkiss: There is a discussion of this transaction, and then, toward the bottom of page 256, this resolution:

"Be it Further Resolved, that the officers of this Corporation are hereby authorized and directed to sell on or before December 31, 1933 to the Seller said 25,000 shares of the capital stock of Chicago Yellow Cab Company, Inc., at a price of One Hundred Ninety-seven Thousand Five Hundred Dollars ($197,500.00), * * *"

Then on page 257 there are certain resolutions with respect to the employment of Thomas B. Hogan as General Manager for the year 1934 at a salary of $24,000 a year; Benjamin Samuels for $24,000 as Manager of the Legal and Claims Department; and of Ralph E. Stouffer as Superintendent at $12,000 a year; and Rudolph H. Bieze as Comptroller, $10,000.

I offer Government's Exhibit 173, consisting of letter agreement between Parmelee and Yellow, dated December 21, 1933, referring to the transaction, and agreeing to take up and pay for the shares of stock at $197,500.00.

535 (Said document, so offered and received in evidence, was marked Government's Exhibit 173.)

Mr. HOTCHKISS: I offer Government's Exhibit 174, consisting of minutes of directors' meeting of Parmelee, dated December 27, 1934.

(Said document, so offered and received in evidence, was marked Government's Exhibit 174.)

Mr. LYNTON: If your Honor please, at some later and more appropriate point in this trial we shall have some comments to make about the labels and captions by the Government and some of the comments of Government's counsel in categorizing these documents.

But there is here a statement which we think is so misleading in its effect that I should like to make this particular observation at this time.

In connection with this Subdivision (h) on page 258, which is an introduction to proposed Government's Exhibit 174, I would like to point out that the transaction indicated in proposed Exhibit 174 has no relationship whatever to the transaction on the preceding Subdivision

536 (g), and that the caption of the Government entitled: "Exercise by Parmelee of Its Option to Repurchase from Yellow Remainder of Chicago Yellow Stock," is inaccurate.

In 1933, by December, in connection with the purchase and exercise of this option to repurchase by Parmelee from Yellow of the 25,000 shares of Chicago Yellow which were the only shares that ever were purchased and repurchased, the transaction was closed.

537 The COURT: Well, may I say that that is not a part of the exhibit. These captions or designations or characterizations are not a part of the exhibit. It is merely some label that the government has placed on them, maybe to serve their own purpose, but so far as this court is concerned, it is no part of the exhibit at all.

Mr. LYNTON: I appreciate that.

The COURT: It will not have any influence on the court.

Mr. HOTCHKISS: It is not, of course, intended as evidence.

Mr. LYNTON: I understand that, too. My only point at this time arises because of the juxtaposition of those documents, and I do not want any suggestion of relationship between these transactions, because, in fact, there is none.

The COURT: That will not mislead the court. I will only follow the exhibit itself, not the caption.

Mr. HOTCHKISS: Government's Exhibit 174 consists of the minutes of the Directors' Meeting of Parmelee, dated December 27, 1934.

There were present Rank, Wyatt and Houston. Mr. Rank, President of the corporation, called the meeting to order, then reported that after consultation with certain of the directors of the corporation, he had exercised the option for the repurchase of certain shares of Chicago Yellow Cab Company, Inc. stock granted to this corporation upon the sale of such stock in March, 1934.

538

Then a resolution approving the action of the President.

At this time, Mr. Williams will take over.

The COURT: The court will recess for five minutes.

(Thereupon a recess was taken.)

The COURT: Proceed, please.

Mr. WILLIAMS: I offer Government's Exhibit No. 68, which is a letter dated November 24, 1945, from Mr. Oakland, Vice President of CCM to R. E. Niederwiesen. That letter appears at page 130 of the summary.

Mr. LYSTON: There is an objection in addition to all the standing objections, on the question of privilege, but that is of a character ruled on before.

The COURT: Overruled.

539

(Said document, so offered and received in evidence, was marked Government's Exhibit 68.)

Mr. WILLIAMS: I wish to call the Court's attention on page 131, there is a long-term note of Parmelee contributed to its capital per resolution of Board of Directors, December, 1935, $1,338,943.24, and a note of Parmelee Transportation Company plus interest contributed to capital of Parmelee Transportation Company of about $600,000.

Then the post script by Mr. Fuller:

"If you agree that the transfer between Checker and Parmelee was a tax-free reorganization we may be able to sustain the cost of $2,876,940.76 for invested capital of Parmelee instead of the $2,378,176.88 as computed by the Revenue Agent."

I now offer Government's Exhibit which is numbered 67, which is a letter from I. M. Nelson to R. E. Oakland.

Mr. LYSTON: That, again, is a question of privileged character, and I object on that ground in addition to the standing objection.

The COURT: The same ruling.

(Said document, so offered and received in evi-
540 dence, was marked Government's Exhibit 67.)

Mr. WILLIAMS: I wish to call the court's attention to the end of the exhibit, in which the statement is made:

"In the conferences which I had with the Government, I endeavored to show that the transfer of the stock of the Motor Cab Transportation Co. etc. in exchange for the 422,787 shares of the Parmelee constituted a sale and not a reorganization, . . ."

I now offer Government's Exhibit 78, which appears on page 138 of the summary.

Mr. LYNTON: There is one deviation with respect to this exhibit from the other exhibits of a privileged character thus far considered. I have been advised then in addition to the circumstances attending the inspection in the offices of Parmelee of a nature similar to those at the offices of Yellow and Chicago Yellow, additional facts existed, and I should like therefore to make a proffer of testimony, if I may, with respect to those additional facts. That proffer is as follows; that in addition to the testimony of
541 the same character as given by Mr. Samuels at yesterday's session, Mr. Passolt of Parmelee, to whom the government representative spoke, advised the government with respect to documents between Parmelee and its counsel,

that those documents were segregated from the general files of Parmelee and were kept separately in particular files; that Mr. Passolt advised the government representative that on the basis of an attorney-client privilege, he declined to permit access to those files; that the government representative replied that the government would have the same right to obtain those communications through use of a subpoena as with respect to the general documents, and that Mr. Passolt acting under that statement of the government representative subsequently gave the government access to those confidential files.

Mr. WILLIAMS: Well, it is my understanding, as I have been informed by men in my office, that the number 11 which appears on the top of this document signifies that this document came from the files of CCM and not Parmelee.

Mr. LYNTON: I am not sure about that particular fact, because the objection that I am making really is an
542 objection to the document which came from the files of Parmelee. If this particular document is stated not to have come from those files, I will reserve the objection and the proffer until we come to the documents of

Parmelee, but I should at least like the proffer to be recorded.

The COURT: Well, may I say that such evidence, if adduced, would not alter my ruling for the reason that they were given up voluntarily after the discussion. He did not stand on his privileged rights and refuse to give them. That is the basis of my ruling. The attitude of the government is he was not compelled to give them.

Mr. LYNTON: May I, for the purpose of the record, have this proffer stand?

The COURT: You may.

Mr. LYNTON: As with respect to subsequent documents as between Parmelee and counsel.

The COURT: You may.

Mr. LYNTON: May I report, as I did yesterday, the position of that defendant, acting under the statement of the government, it was acting under a business compulsion, which under the circumstances amounted to a legal compulsion.

The COURT: Proceed.

543 (Said document, so offered and received in evidence, was marked Government's Exhibit 78.)

Mr. WILLIAMS: I will not read Government's Exhibit 78. I wish to point out that it is a memorandum of a conference between Morris Markin, Rank, Oakland and Fuller concerning refunding certain obligations of Parmelee.

I offer as Government's Exhibit 175 a letter dated October 11, 1934 from Frank D. Fulton to Thomas Hogan. This appears on page 259 of the abstracts.

Mr. LYNTON: In addition to all the standing objections which still continue, I object to this document on the ground it is purely a personal letter between Mr. Fulton and Mr. Hogan.

The COURT: A what?

Mr. LYNTON: A personal letter rather than a letter on behalf of any of the defendants.

The COURT: Well, does the government say it will be connected up and made material?

Mr. WILLIAMS: We will offer Government's Exhibit 178 shortly which shows that Mr. Fulton, the writer of this letter, was a director of Yellow at that time, and the recipient of the letter, Mr. Thomas Hogan, was an

544 officer of Yellow.

The COURT: Well, with that statement, that it will be connected up and made relevant, the court will allow it, and I overrule the objection.

(Said document, so offered and received in evidence, was marked Government's Exhibit 175.)

Mr. LYNTON: I should like to have my objection clear on this point, that although Mr. Fulton was one of the directors at that time, our position is that this letter was written in a personal capacity.

The COURT: Very well.

Mr. WILLIAMS: (Reading)

"The resolution adopted with reference to the committee of three considering changes and the like does not seem to be comprehensive. The real object, I understand, was to consider suggestions made by Mr. Marble with reference to reducing the number of cabs on the street in view of the probable decline in revenue and to consider certain suggestions of his as to how this should be brought about.

"I have very little interest from an owning standpoint in any of the companies and I believe am in a position to analyze the situation clearly and fairly.

"I believe that the committee should go into the matter very exhaustively for the purpose of ironing out a great many unhealthy conditions, some of which were inherited and some of which have been brought out recently. I do not believe that the committee can sit down and in a few minutes comprehend and understand all of the ramifications which have been created in the building up of the taxi cab situation in Chicago.

"One of the first things I believe the committee should have before it is the capital and structural set-up. This should cover all subsidiaries, as well as the holding company. I take it that while we were authorized to do this work by Yellow Cab Company that it involves upon us the duty of considering the set-up of all of the companies.

"In giving the capital set-up, it would also be well to indicate, so far as possible, the stock holdings.

"I take it that as directors it is our duty to work for the interest of Yellow Cab Company and its affiliated companies. We are in the somewhat peculiar position of being theoretically controlled by a management company, which is controlled by the person who assumes to be in control of our major rival company. I understand it was a loan from our company which permitted the purchase of stock of this rival company and the present situation seems to be that with our own money we have put into the field or have financed

a company which is gradually undermining us. This undermining is being done because we are not permitted, or, at least, do not attack the situation vigorously with the idea of maintaining our supremacy in the taxi cab field. I feel quite confident that if the officers of Chicago Yellow Cab and Yellow Cab were left to their own initiative that they could take care of the Chicago situation in such an adequate way
547 that there would be little left of our rivals.

"It seems to me that we should come to some conclusion with reference to policies and then pursue these policies with the idea of building up the Yellow Cab Company instead of standing acquiescent and let ourselves be shot at from all sides without retaliation. It seems to me that with approximately $2,000,000 in the bank and with the good reputation which has been built up by the present officers of the company, that we ought to dominate the field and that we ought not to be asked to take a subordinate position."

Mr. WILLIAMS: I will omit the last paragraph.

I offer as Government's Exhibit 176 a letter from Frank D. Fulton to the Board of Directors of Yellow.

Mr. LYNTON: I make the same specific objection as to the personal character of this proffered document, as well as all standing objections.

The COURT: Objection overruled.

(Said document, so offered and received in evidence, was marked Government's Exhibit 176.)

548 Mr. WILLIAMS: (Reading)

"I have recently been in a number of cities and made some investigation in each of the taxicab situation.

"I find that the smaller cars are generally in use and I think are more satisfactory than the heavy and cumbersome cars which are being used in Chicago and New York.

"I think the officers of this Company should immediately ascertain what they can purchase a substantial unit of modern, reasonable sized cars for and such cars should be purchased within the near future to replace our obsolete cars on the street.

"I think the directors should adopt a policy of replacement and that this policy should be formulated and carried out without an idea of competition but with the idea of doing the 'horse sense' thing that good business judgment demands should be done."

Mr. Williams: I offer as Government's Exhibit 177 a letter dated December 26, 1934, addressed to Frank
549 Sawyer, which is unsigned, but I understand counsel will stipulate that it was written by Mr. Hogan who was then an officer of Yellow.

Mr. Lynton: I will stipulate it was written by Mr. Hogan, and I will stipulate that at that time Mr. Hogan was an officer of Yellow. I will not stipulate that he wrote it in his capacity as an officer of Yellow.

Before making a specific objection, in addition to the standing objections, may I ask for an identification from you as to who is Mr. Frank Sawyer?

Mr. Williams: Mr. Frank Sawyer at that time was President of Checker Taxi Company of Boston, Massachusetts.

Mr. Lynton: You will stipulate that that company had no connection whatever with any of the defendants in this suit?

Mr. Williams: If you state that as a fact, we will so stipulate.

Mr. Lynton: It is a fact. I object to this letter upon the specific ground that it is entirely a personal letter, and it is not binding upon any of the defendants. That objection is in addition to all standing objections.

The Court: The objection is overruled.

550 (Said document, so offered and received in evidence, was marked Defendants' Exhibit 177.)

Mr. Williams: I will skip the first paragraph.

"Well, we have done a considerable business so far this month. We have sixty thousand ahead of last December for twenty-five days and we are $103,000 ahead of November for twenty-five days. The first part of November, after the Fair closed, it was just terrible. Looks like we ought to make $60,000 or better this month. We are still paying our dividends and we will have over the two million dollar mark in cash and do not owe anything except our current indebtedness.

"We have been buying our stock in the open market and have taken off the market approximately 150,000 shares. The public doesn't seem to want it, even though we are paying dividends. We are running 2,166 cars and the first of the year, they will only stand us about $600,000. We have 1,165 cars that will only stand us $109 a car on the books. We will

551 have to buy some new equipment is 1935 and would like to get your ideas on equipment.

"As you know, M merged the two outfits in Cleveland. The Chevrolets are outbooking the Checkers about $3 per car per day. They have a little over 200 cars in each outfit. They double shift all their cars and book on the average of $13 to $14 a car per day,—they have reduced the number of cars in the town substantially. We are working approximately everything single shift except on Saturdays and days prior to holidays. For instance, we worked 2,460 men Monday night and took in $26,200 in receipts."

I will skip the next paragraph.

"The San Francisco and Los Angeles fellows were in a couple of weeks ago and bought a couple hundred DeSotos. They got a lot of extras with the car,—partition, etc., and bought them for $900, delivered to Frisco and Los Angeles, that would mean $785 Chicago.

These fellows out west are considered pretty smart
552 operators. At least they always gave me that impression when I was in California a couple of years ago. We just cannot pay as much as we have been paying for cabs and if we are going to be the first class cab company, will have to come out with the stylish modern looking car. This thing of running cars four and five years is a tough job.

"I took a handful of meter sheets the other day and had them checked, and out of 185 trips, there was only one trip that had five passengers. The best we can average is 1.4 passenger per trip and we think the extra passenger charge is losing us some business. Now, if we could get a car at the right price, we could cut the depreciation so that we could knock off the extra passenger, as the gross on extras doesn't worry us, and judging from our examination of records of the number of passengers, don't see where it pays to keep such a big car when there are so few five-passenger trips."

553 I offer as Government's Exhibit 178 a letter from Markin to Samuels, dated January 15, 1935.

(Said document, so offered and received in evidence, was marked Government's Exhibit 178.)

"In confirmation of our telephone conversation of today I understand that you are going to have elected to the Board of Directors of Yellow Cab Company

(the operating company.) Mr. Charles J. Condon and Mr. Levin Rank to succeed Mr. Frank Fulton and Mr. Paul Keller. This will substitute representatives of Parmelee Transportation Company stock interest which, as you know, is in excess of 73,000 shares for two individuals who have no stock interest in the company. It will also place on the Board of the operating company individuals closely associated with the management, which I know you will agree with me will be desirable.

"I feel confident that Mr. Keller and Mr. Fulton, not being active operators and not having any stock
554 interest, will understand this change, particularly in view of the fact that they have already stated that they have no interest in the actual management of the company and have no stock holdings."

I offer as Government's Exhibit 179 a letter dated January 15, 1935, from Mr. Samuels to Mr. Charles Fuller.

Mr. LYNTON: With respect to this proposed exhibit and proposed Exhibits 180, 181, 182 and 183, there is an objection on the ground of privilege, in addition to all standing objections which still continue; and at this time I should like to make the objection with respect to all those exhibits, without repeating them.

The COURT: The record may show the objections are overruled.

(Said document, so offered and received in evidence, was marked Government's Exhibit 179.)

Mr. WILLIAMS: Will you stipulate which defendant Mr. Charles Fuller represented, on which you base your objection of privilege?

Mr. LYNTON: I stipulate this, that Mr. Charles Fuller is a member of the firm of Chadbourne, Hunt,
555 Jaeckel & Brown, that that firm is counsel to the defendant Parmelee Transportation Company, that the defendant Parmelee Transportation Company has a contract which may be characterized as a management consultants contract with Yellow.

Mr. WILLIAMS: And that that was true in January, 1935?

Mr. LYNTON: That is right.

Mr. WILLIAMS:

"I was called on long distance telephone today by Morris Markin and he advised me that he wished me to see to it that the directorate of Yellow Cab Co. be

changed eliminating Mr. White, Mr. Fulton and Mr. Keller and substituting therefore Mr. Rank, Mr. Wyatt and Mr. Houston of Pittsburgh. I told him over the telephone that I considered this extremely unwise and very bad policy and that from the standpoint of the resident directors in Chicago who would have to stand the brunt of answering question as to why this change, a very radical one, was being made, we, the local directors would have absolutely no valid excuse or
556 reason therefor. I for one fail to see what possible excuse I could give to any inquiring stockholder for such a change in directors, particularly in view of the fact that the three men whom we now have at least have some standing in the community and are connected with fairly large interests, whereas it would be very difficult to explain why a company operating in Chicago should have three of its directors, who live in New York and Pittsburgh.

"I feel that this is absolutely ill advised and purely the result of the personal feelings of Morris and further, believe that he is not giving the matter the proper serious consideration which the subject is entitled to. While it is true that Parmelee, with its 75,000 shares of stock, should be listened to with reference to the directorate of Yellow Cab, still, juggling the Board is something which requires business judgment instead of mere personal feeling. Furthermore, I have no knowledge as to whether Morris Markin in issuing
557 these instructions to me has consulted the Board of Parmelee and I am led to believe that this was not done because I asked him distinctly whether he had taken it up with your firm and I was led to believe that he had not done so and that he felt that he was in position to issue the direction himself.

"I have discussed with you very often the proposition that we are at all times most anxious to cooperate with him but this proposition is so unbusinesslike and ill advised, particularly at this time, that I would like an expression from you and feel that before anything is done we should give it calm, deliberate consideration and, furthermore, we should be sure of any step that is taken or may be taken has been fully and fairly considered by the Parmelee Board.

"Since dictating the above portion of this letter, I just was called upon the 'phone by Morris and again

he tells me that he wishes to substitute Mr. Condon's name for Mr. Wyatt and Mr. Rank's name for Mr.
558 Fulton. I cannot understand what possible excuse we as directors can have for these sudden shifts in members of our Board, so sudden in fact that from one hour to the next even Mr. Markin manages to change his ideas. After all, the responsibility for making changes rests with the members of the Board here and unless some valid excuse or suitable reasons can be found for such a substantial shakeup in the Board, I do not see how anyone can possibly justify it and I for one refuse to assume this responsibility and carry the load.

"Your prompt advice in the matter will be very much appreciated."

I offer as Government's Exhibit 180 a telegram from Fuller to Samuels dated January 17, 1935.

I will not read that exhibit.

(Said document, so offered and received in evidence, was marked Government's Exhibit 180.)

Mr. WILLIAMS: I offer as Government's Exhibit 181 a letter dated January 17, 1935, also from Fuller to Samuels.

559 (Said document, so offered and received in evidence, was marked Government's Exhibit 181.)

Mr. WILLIAMS:

"I enclose confirmation of my wire to you of today, and I trust that the whole matter will have long since been settled by the time you read this letter.

"I regret exceedingly that you feel that the desire of Markin to substitute Condon and Rank for Fulton and Keller is based on personal considerations. I feel confident that such is not the case. The desire here in New York is to simply have the Parmelee stockholdings represented on the operating company Board, and Rank being constantly in Chicago, and Condon being permanently located there, seem to the directors of Parmelee to be the appropriate people. The reason that Markin changed from Houston and Wyatt to Condon alone was due to my statement to him that Condon, being an officer of Parmelee and being in Chicago, should be substituted in place of Houston, who would never attend meetings, and that Parmelee was not
560 entitled to any more than two directors in view of its stockholdings. Markin acquiesced in this suggestion of mine and telephoned you accordingly, and I

assume that this telephone call is the one you refer to in the last part of your letter.

"Of course I am not alive to the personal cross currents of the directorate in Chicago, but I personally do not see where there would be any embarrassment in explaining the situation to Keller and Fulton: namely, that they are not operating men and not stockholders, and the Parmelee stock is entitled to representation on the operating company Board. It should also be pointed out to Keller and Fulton that there is no personal element in the whole thing, which is evidenced by the fact that Keller and Fulton are still on the Chicago Yellow Board, which is the public company.

I talked to Rank on the telephone this morning and told him, as I suggested in my wire, that the meeting be adjourned so that this point can be cleared with
561 Keller and Fulton, and I trust he has already done so.

"I want to assure you that to my own knowledge Markin never had any idea of making any changes in the Board of Directors of Yellow Cab Company until the directors of Parmelee had canvassed the matter and had taken it up with him because of his personal contacts with you. I, therefore, regret that the method in which he took it up with you made you feel that there was some personal animosity in the request, as I do not feel that was the case.

"Naturally if Fulton and Keller resent the request to withdraw from this operating subsidiary Board, my only suggestion is that some other arrangement be made, either by increasing the Board, or otherwise so that Parmelee will have representation.

"I frankly think that we are all giving the matter of responsibility somewhat more importance than it deserves, particularly in view of the fact that Parmelee's desire is simply one of representation,
562 which can be accomplished in a variety of ways.

"I, therefore, feel that if Fulton and/or Keller will not withdraw in such a way as to relieve you of any responsibility, then I suggest the Board be increased, or failing that, some other arrangement be made so Rank and Condon can be made available as directors.

As I said before, I hope that by this time everything is peaceful and that you are completely satisfied that nobody's toes have been stepped upon, as it would be of great regret to me to see a trivial matter result in any personal unpleasantness between you and your associates."

I offer Government's Exhibit 182, a letter from Samuels to Fuller, dated January 20, 1935.

(Said document, so offered and received in evidence, was marked Government's Exhibit 182.)

Mr. WILLIAMS: This is in response to the preceding exhibit.

563 "Answering your letter of January 17th and telegram, I wish to make clear that a letter which I received from Morris the afternoon before the Board meeting was addressed to me officially as Vice-President of the Yellow Cab Co. and placed me in a very embarrassing position. In the first place, the letter stated that he had assumed that I agreed with him in reference to his proposed suggestions about changing members of the Board and then to make matters still worse imposed upon me the obligation of asking Mr. Fulton and Mr. Keller to resign. Naturally, I was in a spot where I had to bring this matter to the attention of the full Board and Mr. Rank, who was present, will have undoubtedly by this time explained to you the entire situation. I wish to say that I never had a more unpleasant responsibility pushed on to me in my life and I hope never to have another one. In fact, if I was in good health prior to that meeting, since then I have suffered considerably and that is the thing which burns me up.

564 "You will recall the discussion that I had in your office on Monday, January 7th, in reference to the proposition of removal of any directors. That must be fresh in your mind and at that time you expressed no such ideas as are mentioned in your recent letter. You, of course, certainly must be aware of the fact that the suggestion was the removal of Mr. White, Mr. Fulton and Mr. Keller, not because they did not represent the interests of Parmelee but because they had no stock interest in Chicago Yellow Cab which of course to my mind was a very poor reason, because at the time they were placed upon the Board of Parmelee, none of them had any stock interest. Since that time,

Mr. White has become the owner of 1000 shares of Yellow.

"Please bear in mind that these three men were placed upon this Board by Parmelee and that I and every other member of this Board was placed here by Parmelee. It, therefore, seems a direct slap in the face at me, as well as every other member of the
565 Board, that Parmelee at this late date suddenly and without any reason or basis decides that three members of the Board are unfit to act as directors and watch the interests of Parmelee and three others are required for that purpose. It seems that this is an accusation that I and the other members of the Board have acted in a fashion which would be directly antagonistic to the interests of Parmelee and this I insist has never been the case and as I listened to Mr. Rank the other day in the Board Meeting, I specifically asked him whether the Board had at any time acted contrary to the wishes, desires or interests of Parmelee and he admitted that it never had, with the exception of entering into the Firestone contract and in this case I called his attention to the fact that the Firestone contract had been entered into only after considerable correspondence and discussion, both with him as President of Parmelee and with Morris. If that has been the history of the members of this Board and there is no excuse for criticising the action of these men on
566 the Board, then the only way that I could explain their attempted removal was for personal reasons. Being President of the holding company, I would be the one who would be asked what were the reasons for this sudden change in so many members of the Board and I have yet failed to see or hear of one single substantial, reasonable excuse that I could give as President to any inquiring stockholder and I am sorry to say that your letter fails to give me any other reasonable excuse."

I will omit the rest of that page and begin the first complete paragraph on page 267.

"Also, please bear in mind that this statement that Parmelee suddenly desired more representation on the operating Board seems to me rather beside the question, because you realize, of course, that aside from the fact that all of these men were placed on the Board of Parmelee, the meetings of the operating company Board are always held openly and Mr. Rank and

Mr. Nelson, who was placed on the Chicago Yellow
567 Board at the last annual meeting, always sat in at the operating Board meeting and no action has ever been taken by the operating Board meeting without the fullest and frankest discussion in their presence and in which discussion they have participated fully and freely. As I said before, no action has ever been taken unless it met with uniform approval."

Mr. LYSTON: I should like you to read, if you would, the paragraph which you have omitted on page 266, in the middle of the page.

Mr. WILLIAMS: I will be glad to.

"You have always taken a very fair and reasonable attitude in connection with the conduct of the affairs of the companies here and you and I have thoroughly agreed that in every case the directors here must act solely and exclusively for the benefit of stockholders of Chicago Yellow and its various subsidiaries and there cannot be any division of loyalty on that particular point. Of course, as directors we must respect the interests of Parmelee because it owns over 73,000
568 shares of this stock and we, in looking after the interests of all stockholders of the company, must look after the interests of Parmelee as a large stockholder and you know, as well as I do, that there has never been anything done by the Chicago Board which has ever failed to take into serious consideration the welfare of Parmelee, as well as all its other stockholders, keeping in mind that the interests of Chicago Yellow and its subsidiaries must at all times be the primary consideration, as it has been. Do I need further proof of the reasonableness and the loyalty of our action when I tell you that I defy any one to show us where we have acted contrary to the interests of Parmelee as a stockholder, and the fact remains that at no time to my knowledge has there been a division of opinion on the part of these Boards as to what should or should not be done in any given situation."

I will go back to where I left off on page 267:

569 "With reference to your statement that Mr. Fulton and Mr. Keller are not operating men, I cannot agree with that as being a reasonable excuse, because it might have been an excuse when they were placed upon the Board by Parmelee but they have had three solid years of valuable experience in this field now and

to my mind it is far more reasonable to have men sit on the Board from the outside field, to give us an outside slant, and an outside checkup, than to have the Board composed entirely of men so close to the operation so that they ofttimes miss some of the very important features of their own mistakes.

"In fact, may I call your attention to the situation which came up here last fall when Morris suggested to us that in considering many of the practical problems of the Yellow Cab Co. business in Chicago, and the question arose as to the appointment of a committee to study this situation, he, Morris, representing Parmelee, suggested that it would be unwise to have that committee composed of the men in the operation
570 of Yellow Cab; and, at his own suggestion, the committee named was to be composed of those members of the Board who were not connected directly with the operation. Consequently, you will see that the suggestion about not being operating men does not seem to fit in with theory held last fall."

I will skip the remainder of that exhibit.

I offer as Government's Exhibit 183 a letter dated January 23, 1935, from Fuller to Samuels.

(Said document, so offered and received in evidence, was marked Government's Exhibit 183.)

Mr. WILLIAMS: I will read only the last paragraph.

"In this connection, so my files can be complete, I would appreciate it if you would send me a list of the officers and directors as now in office of Yellow Cab Company. As you know, I keep a running list of these persons in my files here."

I offer as Government's Exhibit 184 a telegram from Markin to Corporation Trust Company, dated May 14, 1935.

571 (Said document, so offered and received in evidence, was marked Government's Exhibit 184.)

Mr. WILLIAMS:

"Corporation Trust Company Room 332 120 Broadway Benjamin Samuels President Yellow Cab Co. NYK Protest as stockholder of Waverly your voting stock to reflect your nominees to the Yellow Cab Board and will hold you personally responsible for any damage to Waverly or its stockholders"

I offer as Government's Exhibit 185, a letter from Chicago Yellow to Markin, dated March 27, 1935.

(Said document, so offered and received in evidence, was marked Government's Exhibit 185.)

Mr. Williams:

"There are a number of matters which you have indicated that you desire to have us, the managing officers of Chicago Yellow Cab Company, Inc., its subsidiaries and The Waverly Corporation, submit with our approval to the respective Boards at their next meetings, some of which have been covered by written proposals and some of which you have discussed orally with us. The proposals in question are as follows:—"

572

I think I will skip those various proposals except to point out that at the bottom of page 270 one proposal relates to the purchase of 1000 new purpose-built cabs at the price of $1350 each by Yellow from CCM. The last sentence of the paragraph at the top of page 271 states:

"We are also informed that Checker Cab Manufacturing Company has not manufactured any cabs for approximately one year."

Mr. Lynton: I think I would like to read all of that No. 1, under Subdivision C.

Mr. Williams: Do you wish to read it?

Mr. Lynton: If you would like me to.

Mr. Williams: Go right ahead.

Mr. Lynton: If you would like me to help your vocal experience.

"1. No written proposals have been submitted in regard to this matter. In verbal conversation you propose to cause Checker Manufacturing Corporation to manufacture and deliver to Yellow Cab Company 1000 new purpose-built cabs, at the price of $1350. each, and after some further discussion you verbally guaranteed a $15,000. trade-in over and above the undepreciated value, on the 1000 old cabs to be taken out of service. In this connection you have submitted samples of upholstery and have discussed with Mr. Stouffer, our Maintenance Superintendent, the various parts to be used in the production of these new cabs. It is our understanding that Checker Cab Manufacturing Company has on hand a large inventory of unused parts, to be used in the production of this new cab. We are also informed that Checker Cab Manufacturing Company has not maunfactured any cabs for approximately one year.

573

"2. *Terms of Purchase.* We desire to make the following comments:—"

I am interested in the last sentence, unless you want me to read the whole paragraph.

Mr. WILLIAMS: Go ahead.

Mr. LYNTON:

"We will assure you that if, after testing the six samples submitted by you, and after the correction
574 by Checker of any defects which may appear at no additional cost to us, the officers of Yellow Cab Company will recommend to the Board that an order be placed with you for 1000 cabs, provided that these cabs are still the most satisfactory of those submitted to the company."

I think that is all.

Mr. WILLIAMS: I offer as Government's Exhibit 186 minutes of directors' meeting of Yellow, dated March 28, 1935.

Mr. CLIMENKO: Would you suspend for just one minute, please? May we have that indulgence?

Mr. LYNTON: May we observe one of the omitted portions of this exhibit relates to certain objections by Yellow to a proposed negotiation affecting the oil problems of Benzoline.

Mr. WILLIAMS: I have offered 186.

(Said document, so offered and received in evidence, was marked Government's Exhibit 186.)

Mr. WILLIAMS: Mr. Morris Markin was present at the meeting. Mr. Thomas B. Hogan acted as Chairman.

"The chairman made a report of the cars submitted to this corporation by various manufacturers de-
575 siring to sell this corporation the 1000 new taxicabs which the Board had decided to purchase in the spring of this year. He stated that the first car submitted had been an Auburn, which was found to be too small and with such low doorways that an average sized man could not enter the cab without stooping into a very uncomfortable position. He stated that both the cab drivers and the management considered this car absolutely unsuitable for this company's purposes. He further stated that a Nash pleasure car had then been submitted; that it would be necessary for this company to equip a standard pleasure car so that it might be used for cab purposes, and that in the judg-

ment of Mr. Stouffer, Maintenance Superintendent, this company should not attempt to convert a pleasure car into a taxicab, but should buy a purpose built cab. It was his thought that if the company had to convert pleasure cars into cabs, the cost would amount to far more than the price for which this company could purchase an equally good purpose-built cab.

576 "The chairman then stated that Ford Motor Company had at first submitted a stock job which had been tested for a few days by certain of the drivers and himself, and which plainly showed that it would not stand up; he further stated that Ford had later submitted a car with a special purpose-built body, but that the management felt that this purpose-built Ford was not heavy enough car to withstand the hard usage which is given to cabs. He stated that the next car which had been submitted was a light Packard, which at that looked like an advantageous purchase for this corporation, but that upon further investigation it appeared that in order to deliver Packards for cab purposes it would be necessary to put a larger body than Packard's light car now carries, on the Packard light chassis and to elongate the framework by ten inches.

"Mr. Stouffer expressed the opinion that it is the general experience of experts and has been his experience that this plan would not work out satis-

577 factorily. The chairman thereupon stated that a purpose-built Pontiac had next been submitted, and that this car was very well liked except for the fact that it had a three-inch ridge running through the center of the floor in the space which the passengers occupy, and that it is the company's experience that passengers trip over such small things as rugs, and that the company could not afford to operate this type of car; Pontiac could not remove this ridge and it was therefore determined not to purchase this car. He stated that Yellow Truck & Coach Company had indicated several weeks ago that it would submit a purpose-built car containing different parts from various General Motor Products, but that although delivery of these cars for test purposes had been promised for several weeks, they had not yet been submitted. He stated that Buick had also submitted cars which in his judgment were not suitable.

"The chairman further stated that Checker Cab Manufacturing had built the car which this company is now operating, and that it had submitted an
578 offer to sell this company 1000 purpose-built cabs at the price of $1350.00 each plus any state and Federal excise and sales tax.

"Mr. Stouffer stated that he had approved the specifications and that the company's experience with the cabs heretofore manufactured by Checker Cab Manufacturing Company is good. He further stated that Checker Cab Manufacturing Company will be able to furnish replacement parts at all times during the life of the cab, which is a very important item to be considered by the Board when authorizing the purchase of these new cabs."

The resolution then resolves to buy 1000 CCM cabs and to furnish ten percent of the purchase price by the signing of the agreement.

I wish to call the Court's attention to the fact that in these minutes the only price mentioned of any of these cars is the price of the CCM cabs.

Mr. LYNTON: In the rapidity of passage from Exhibit 185 to Exhibit 186, the Government's reading was such that I did not care to interrupt.

579 I would like, however, the record to show that our long-standing objections which continued do not apply to this particular Exhibit No. 186, and that we have no objection to admission of this exhibit.

All of our standing objections are now reinstated with respect to the subsequent documents.

Mr. WILLIAMS: I offer as Government's Exhibit No. 187 a letter dated May 14, 1935, from Samuels, Hogan and Bieze to Mr. Dwight P. Green, there being attached thereto an escrow dated May 14, 1935, of Marion B. Stahl and Charles Fuller and the resignations of each as directors of Chicago Yellow.

Mr. LYNTON: In connection with this proposed exhibit and a few of the subsequent ones, in addition to the standing objections, there are objections on the ground of privilege and, if I may, I will recite the next few exhibits so that the record may show this additional objection on our part. That objection will apply to proposed Exhibits 187, 189, 193, 194, 195, at this time.

(Said document, so offered and received in evi-
580 dence, was marked Government's Exhibit 187.)

Mr. WILLIAMS: This exhibit relates to an escrow agreement by which Fuller and Stahl would resign as directors of Chicago Yellow if two other directors resigned or stated they did not desire to be relected.

I will read the first complete paragraph on page 275.

"The foregoing arrangement has been made in order to permit the election of two directors nominated by Parmelee Transportation Company in lieu of two of the directors who were elected on May 15, 1934."

I offer as Government's Exhibit 188 a letter from Samuels to Rank dated May 22, 1935.

(Said document, so offered and received in evidence, was marked Government's Exhibit 188.)

Mr. WILLIAMS:

"The letters which you sent to Mr. Bieze, in re directorship escrow agreement, were received today but owing to Tom Hogan's absence from the city their remailing back to you will be delayed one day.

Everything seems to be O. K. and the resignations
581 and escrow arrangement were duly received and are in proper shape.

"At the meeting the other day, the only action taken was the reelection of the same officers as last year and then adjournment."

I offer as Government's Exhibit 189 a letter dated May 20, 1935, from Mr. Rank, President of Parmelee, to Mr. Dwight P. Green.

(Said document, so offered and received in evidence, was marked Government's Exhibit 189.)

Mr. WILLIAMS:

"I refer you to the escrow instructions signed by Mr. Stahl and Mr. Fuller and I submit to you herewith the enclosed letter from Paul Keller from which you can see he has no intention or desire to continue as a director of the Chicago Yellow Cab Company, Inc.

"In view of the clear expression of his position, I suggest that, as contemplated by Mr. Stahl's and Mr. Fuller's letter, one of their resignations be submitted
582 to the Board of Directors at its next meeting and that Mr. P. L. Houston be nominated and elected to fill the vacancy caused by such resignation."

I offer as Government's Exhibit 190 a letter from Rank to Paul E. Keller, dated May 16, 1935.

This letter asked Keller to state his intentions concerning his reelection.

(Said document, so offered and received in evidence, was marked Government's Exhibit 190.)

Mr. WILLIAMS: I offer as Government's Exhibit 191 a letter dated May 18, 1935, from Mr. Keller to Mr. Rank.

(Said document, so offered and received in evidence, was marked Government's Exhibit 191.)

Mr. WILLIAMS: The letter states he does not care to be reelected to the Chicago Yellow Board, but will continue on the Board of Yellow.

I offer as Government's Exhibit 192 minutes of a directors' meeting of Chicago Yellow, dated June 20, 1935.

(Said document, so offered and received in evi-
583 dence, was marked Government's Exhibit 192.)

Mr. WILLIAMS: It notes in the first paragraph that Mr. Markin was present at this meeting.

The exhibit shows that the Stahl and Fuller resignations which had been placed in escrow became effective, and that two Parmelee men were elected in their place to the Board of Chicago Yellow.

I offer as Government's Exhibit 193 a letter dated June 25, 1935, from Kirkland, Fleming, Green & Martin to Frank E. Fulton.

This letter gives further details concerning this change in directors. I will not read it.

(Said document, so offered and received in evidence, was marked Government's Exhibit 193.)

Mr. WILLIAMS: I offer as Government's Exhibit 194 a letter from Samuels to Markin, there being attached thereto a letter dated January 11, 1934, from Dwight P. Green to Yellow, and a memorandum, of Mr. Fuller, I believe.

Do you stipulate he prepared that memorandum? It begins on page 281.

584 Mr. LYNTON: We will stipulate that is a copy of a memorandum prepared by Mr. Fuller.

We make the standing objections; and also make the objection on the ground of privilege.

I should like to observe in this particular matter that the question of relevancy is so remote that I invite the Court's attention to the fact that this cannot possibly have any relation to the charges in the complaint.

This is a question of whether a subsidiary of Yellow should have its business records in one state rather than in another.

Mr. WILLIAMS: This goes beyond that. It shows that Mr. Fuller proposed that the directors of Waverly Corporation be changed and its corporate records be removed from Chicago to New Jersey for the purpose of hampering any investigation that might be made of the transactions of Waverly Corporation. This has a bearing upon the intent of the defendants in the use of Waverly Corporation to further this conspiracy.

Mr. LYNTON: Now just a minute.

First of all, I want to deny any of the expressions or implications of your statement.

But, secondly, I would like to ask how this document possibly can relate to the question of sales of cabs or the transfer of baggage and passengers between Chicago railroad stations.

585

Mr. WILLIAMS: The Waverly Corporation, as will be explained a little bit further in here, was formed by Yellow Cab Company as sort of a wholly owned subsidiary originally. Then some of the stock was transferred to Ernest H. Miller and eventually it passed into the hands of Morris Markin, but it is for the purpose of holding stock owned by Yellow the parent of Yellow, Chicago Yellow.

This again shows the close relations between the defendants and how they worked together to tie up the corporate relationships which are the gist of this case.

Mr. LYNTON: The question that I pose, if your Honor please, is not a reversion to a theory, what was the function of Waverly, or anything of the sort, but it is a question of what this particular document has to do with the situation. It refers to a transfer of records from one State to another.

Mr. WILLIAMS: It shows an attempt to conceal the facts.

Mr. LYNTON: Conceal what?

Mr. WILLIAMS: The transactions of Waverly, from investigation, and it has a bearing on whether the defendants are conspiring or acting in good faith in normal business transactions.

586

The COURT: At this stage I cannot anticipate whether or not it will or will not be connected, and it will have to go in subject to connection and subject to its being stricken later.

Mr. LYNTON: I should like, if your Honor please, to ask the Government what connecting link there can be between this statement that is made by the Government counsel and the question of sales of taxicabs or the transfer of passengers or baggage between railroad stations in Chicago.

Every time we ask for a specific explanation with respect to a particular document, we get a general argument that somehow or other this will be connected with a conspiracy. I cannot conceive of how this particular document can be linked by any evidence which has been suggested thus far or appears from the balance of the book which thus far has not been introduced, and the Government is just introducing document after document which it cannot connect.

If it will proffer a suggestion of connection, I think that will be a different matter.

587 Mr. WILLIAMS: The evidence will show the connection.

Mr. LYNTON: What evidence, Mr. Williams?

Mr. WILLIAMS: The evidence that we have been offering.

Mr. LYNTON: The evidence that you have in the past?

Mr. WILLIAMS: And that we expect to prove in the future.

Mr. LYNTON: What evidence in the future do you base your contention on?

Mr. WILLIAMS: If the Court please, we will ask for the Court's ruling at this time.

Mr. LYNTON: No, no, no.

The COURT: I think counsel is entitled to know generally in what way this is pertinent.

Mr. WILLIAMS: The basic issue in this case is whether there was an agreement among these defendants to monopolize the sale of cabs to these operating companies and to restrain interstate commerce—

The COURT: Including Waverly?

Mr. WILLIAMS: No, Waverly was not an operating company. Among the operating companies, Checker, Cab Sales and Chicago Yellow and the wholly-owned

588 subsidiaries of Parmelee located in New York, Pittsburgh and Minneapolis; also whether there was an agreement among these defendants to restrain competition in Chicago between Cab Sales, Checker and Yellow, the cab operating companies here, and Parmelee with respect to the interstate passenger business of Parmelee in hauling railroad passengers between stations.

We do not have any written agreements entered into by the parties to carry out these two objectives, to monopolize the sale of cabs and to monopolize and restrain competition among the local companies for the Parmelee business. That agreement will have to be shown by circumstantial evidence. Therefore, the Government is showing the relations between these companies to show that they must have entered into that agreement. We expect to show there was

no competition for the interstate passenger business between Parmelee and Yellow and Cab Sales. That is part of the proof we are going to put in.

We will also show there has been a monopoly in the sale of cabs to these companies, and we are also showing the relations of the companies, and from what they have
589 done in the past, their close relations, and how they worked together, that in effect they are engaged in a common joint enterprise which has the necessary effect and the object of monopolizing the sale of cabs and restraining competition for the interstate passenger business.

The transaction of the creation of Waverly, the use of it by Yellow Cab and by Markin as part of the deal here, is a part of the entire picture of the corporate relationships of these companies.

This particular document shows the intent with which Waverly was used. It shows that they felt that in the creation of Waverly and its use, that that should be covered up and hidden from view, and this relates to a proposal by Mr. Fuller who, as is stipulated, was counsel for Parmelee, to hide the transactions of Waverly from the public's inspection by transferring the records to New Jersey from Chicago and by putting in an entirely new set of directors who, if called upon concerning what wrong Waverly had done, would be able to say, "We don't know anything about it."

That is what these documents show, and that is why we offer them.

590 Mr. Lyston: Now, if your Honor please, apart from the characterizations made by the government, from which we dissent vigorously as to the meaning of this document, I think it is a good time to clarify something about this case. This case is proceeding upon a theory which has been announced by the United States Supreme Court on the prior appeal. This complaint, the Supreme Court states, is a matter of pleading only on the theory that these allegations can be supported. As we will observe at a later time, the assumptions made by Mr. Justice Murphy were not or are not in accordance with the proof adduced on this trial; but the emphasis is that any original attempt to acquire some operating companies, the defendant, CCM proceeded with the subjective purpose of excluding all other manufacturers. That problem is one as to the subjective purpose at the time of the acquisition of these operating companies. I might say that not all of these companies were

acquired. Some of them were formed. We will have an abundance of proof as to the circumstances under which these acquisitions which did occur took place, but the only point I wish to make here is that we are not concerned
591 with the relationship of those corporations once that formation occurred. We are concerned with what was the purpose underlying the original acquisitions, and was that directed to a question of utter and complete domination of the sales of taxicabs.

Now, this, I submit, occurring at the time that it occurred, many years after the structure took place, has no relationship whatever to the theory of the complaint, as stated by the Supreme Court.

Mr. WILLIAMS: As I understand counsel's position, it is that no evidence concerning the intent or purpose can be admitted except at the time of the initial beginning of the conspiracy. Now, this complaint does not charge a conspiracy that came into effect in 1929 and then ended. It charges a continuing conspiracy, one that began in early 1929 and continued right down until the filing of the complaint in 1947. What the people did after that formation is relevant upon the question as to whether that continuing conspiracy has continued day after day since its beginning in 1929.

Mr. LYNTON: I haven't any objection in the world
592 to your putting in documents that relate to the question of the sale of cabs after 1925 to the present day, but I do object to the introduction of a letter which has no relationship to that topic.

On your theory, you can subpoena in the janitor.

The COURT: Well, at this stage of the case, because of the very nature of the case, it is impossible for the court to rule on the question whether or not it is relevant at this time, so the court will admit it subject to your objection, and unless connected up and made pertinent, it will be stricken at the conclusion of the government's case.

(Said document, so offered and received in evidence, was marked Government's Exhibit 194.)

Mr. WILLIAMS: I wish to begin reading on page 281 from the memorandum containing Mr. Fuller's recommendation:

"It is recommended that the company which now maintains a safe deposit box, bank accounts and its books and records in Chicago adopt a policy of ceas-

593 ing to do any business in Illinois and to the extent, if possible, divorce its personnel from the personnel of Yellow Cab, so that its records will not disclose an interlocking situation.

"Accordingly, the following steps should be taken.

"1. The company qualifies as a foreign corporation to do business in the State of New Jersey and opens an office at 15 Exchange Place, Jersey City, New Jersey. The cost of this is nominal.

"2. The company rents a safe deposit box and opens a bank account at a Jersey City bank. Arrangements can be made that no access to the safe deposit box can be obtained and that no funds can be withdrawn from its bank account without the counter-signature of a person designated by Yellow, although the resolution opening the box or bank account will not mention Yellow Cab.

"3. The minute books, books of account and records of the company are installed in its office in Jersey City. These books can be withdrawn from this office at
594 periods of several weeks entires, but it is considered important that the officers of the company can testify that all corporation records are kept outside of the State of Illinois.

"4. The present officers and directors resign and a Board of three directors is elected. These directors are individuals who are not residents of the State of Illinois but who enjoy the confidence of the executives of Yellow Cab. These directors should be individuals who are unable to testify with respect to the politics surrounding the company and will only know who are the stockholders and what appears on the actual books and records of the company. It is suggested that there be selected such individuals from outside the State who would consent to serve.

"In the past it has been possible to obtain from law firms and accountants, doing business in Jersey City, the names of individuals of unquestioned integrity, who would act as directors and officers and keep the
595 books of the corporation as accountants besides.

"In lieu of qualifying in New Jersey, the same program can be followed in Wilmington, Delaware, which is the home office of the corporation. However, a Jersey City office would be a very great convenience, in view of its accessibility to New York.

"5. Any transactions in the purchase of securities or otherwise that the corporation may engage in can be ordered from Chicago and executed from Jersey City. Checks, of course, can be countersigned in Chicago and then forwarded for signature. In the purchase of securities, the securities themselves can be held in safekeeping by the broker until such time as it is convenient to gain access to the safe deposit box. All the securities owned by the corporation could be kept in a safety box in Jersey City, or any other place outside of Illinois, and in order to protect these securities, a provision could easily be made that the safety box could not be opened by the officers or directors, except in the presence of a certain individual to be designated.

596

"The reasons motivating the foregoing recommendation are as follows:

"a. Although the company is maintaining its books in Chicago, it never qualified to do business in Illinois as a foreign corporation and it is believed that its activities would be considered 'doing business' in this state. This situation should be cured not only in order to avoid the possible imposition of franchise taxes but also to eliminate any attack on any of its transactions by reason of the fact that the corporation had no authority to engage in them under the Illinois law. If the company has been purchasing securities and closing its contracts for such purchases in Chicago such an act might be construed as 'doing business' in this state.

"b. The removal of the corporation and its records from Chicago and the change of its personnel would eliminate the convenience of the examination of its books by public, state or tax authorities in Illinois and also any city commission or investigating body would be able to examine into its records only with great difficulty."

597

I wish now to go back to the letter from Mr. Green and to read at page 280, the third paragraph:

"We are advised that certain transactions involving your Company and Waverly are being investigated in connection with the determination of the income tax of your company. At the present time this investigation is being carried on by the field agent in Chicago who may require further access to the records of Waverly.

In this connection it may be inadvisable to remove the records from this jurisdiction until the Revenue Agent's investigation is complete.

"3. For other reasons referred to in Mr. Fuller's memorandum, he suggests that the present directors and officers of the corporation be replaced by nominees outside of the State of Illinois. No doubt some
598 advantage in avoiding service of process might accrue under such a change. In considering its advisability, however, your directors must consider their responsibility with respect to the investment of your corporation in Waverly, which is so substantial that it must be preserved for the benefit of your corporation at all hazards. It seems to us that such a change in personnel would be somewhat superficial and could be easily penetrated upon inquiry of your own directors and officers, who would remain subject to process in this State. In such event all apparent advantage would not only be lost but the reaction resulting from the discovery might prove more harmful than any result which might be anticipated from the present situation."

Mr. Lynch: Now, what is the purpose of the last paragraph? If your Honor please, I make a motion to strike this exhibit because it affirmatively appears that any considerations in the writing of this document were considerations in no way connected with sales or inter-station transfer. They were problems based on income tax or other
599 things, which appear right on the face of the document.

The Court: The court reserves its ruling.

Mr. Williams: I offer as Government's Exhibit 195 a letter from Dwight P. Green to the Board of Directors of Chicago Yellow, dated December 19, 1935.

(Said document, so offered and received in evidence, was marked Government's Exhibit 195.)

Mr. Williams: (Reading)

"You have requested our opinion as to the legality of the proposed sale to your managing officers of 6,000 shares of Chicago Yellow Cab Company, Inc. now owned by the Waverly Corporation and the sale to others of not to exceed 27,000 such shares also owned by The Waverly Corporation."

I will skip the first two paragraphs on page 283.

"As to the proposed sale of 6,000 shares to your managing officers, we understand that the President

of Chicago Yellow Cab Company, Inc. and the
600 President of Yellow Cab Company, both of whom are active in the management and operations of your company and its subsidiaries, will each be afforded the privilege of buying 2,500 of such shares, and that your Comptroller and Superintendent of Maintenance will each be permitted the privilege of buying 500 of such shares; that the privilege so afforded to each such officer will constitute part of the consideration which each is to receive under a three-year employment contract to be entered into at this time.

"With respect to the sale of not to exceed 27,000 shares to others, we understand that the purchaser will not be an officer or director of The Waverly Corporation or any of its affiliates and that no such officer or director will have any interest in such purchase. We understand, however, that the purchaser or his associates own a minority interest in the stock of the Chicago Yellow Cab Company, Inc., and may in some direct or indirect manner be associated with cor-
601 porations which directly or indirectly own a substantial, although a minority, block of stock of Chicago Yellow Cab Company, Inc. We also understand that such sale will be a private sale and no offering of the stock will be made either to the other stockholders or to the public; that by none of the transactions above mentioned will the respective purchasers, or any group with which they may be said to be associated directly, or indirectly, acquire control of the Chicago Yellow Cab Company, Inc., by virtue of such transactions.

"We have not been advised of the exact price to be paid by the purchasers in any of the above mentioned transactions, except that it will be approximately the market price prevailing at the time."

The Court: May I interrupt to inquire whether there is any objection on the part of counsel to running until one, instead of recessing and adjourning at three?

Mr. Lynton: That is entirely agreeable.

Mr. Williams: That is entirely agreeable to us.

The Court: We will do so, except for a few
602 minutes.

(Thereupon a recess was taken.)

The Court: Proceed, please.

Mr. Williams: I wish to read the final paragraph of Government's Exhibit 195, a letter of Kirkland, Fleming, commenting on the proposed sale of stock of Chicago Yellow.

"(c) The nature of the proposed transactions is such as to invite the closest scrutiny on the part of any court, and therefore, to require the greatest of caution on your part to avoid any possible accusation of breach of duty. As pointed out above, such a breach of duty may result from your failure to properly determine (1) the necessity for such a sale, and (2) the adequacy of the price. Of these two questions the first seems to involve no substantial difficulty, but the second may be much more difficult and subject to wide differences of opinion under present conditions, especially in view of the uncertain effect on value which a subsequent change in capital may have and your omissions to solicit bids from your stockholders or the
603 public. If, after full consideration of all the factors to which we have above referred, you feel uncertain as to reaching the proper conclusion upon the two questions involved, we recommend that a special meeting of stockholders be convened for the purposes hereinabove mentioned before effecting the transactions."

Mr. Williams: I offer as Government's Exhibit 196 a letter from Markin to Yellow dated August 20, 1935.

(Said document, so offered and received in evidence, was marked Government's Exhibit 196.)

Mr. Williams: (Reading)

"For reasons that I have already given you verbally, I hereby offer to transfer to Yellow Cab Company all shares of Class A Stock of The Waverly Corporation owned or controlled by me in consideration of the repayment to me of the purchase price originally paid for such shares.

"In view of this proposed transfer by me of these shares, I deem it advisable for the best interests of
604 the stockholders of Yellow Cab Company that my fellow Class A Stockholders likewise transfer their shares to Yellow Cab Company upon the surrender to them of the promissory notes or other evidences of indebtedness given by them in connection with the purchase of their Class A Stockholdings in The Waverly Corporation.

"I think that you will agree with me that this program is for the best interests of Yellow Cab Company and its stockholders; and I accordingly stand ready to make delivery of all my Class A Stockholdings in The Waverly Corporation against repayment of the original purchase price provided that other stockholders will simultaneously make delivery of all their Class A Stockholdings in The Waverly Corporation to Yellow Cab Company."

I offer as Government's Exhibit 197 Minutes of Directors Meeting of Yellow, dated December 19, 1935.

(Said document, so offered and received in evidence, was marked Government's Exhibit 197.)

605 Mr. WILLIAMS: Mr. Morris Markin, as noted in the minutes, was present at the meeting. The minutes relate to giving options to buy Chicago Yellow, and the employment of Hogan, Samuels, Stouffer and Bieze, and extending the Parmelee management contract for three years until December 31, 1938, at $50,000 a year, and that Yellow purchase all the outstanding stock of Waverly, that is, the Class A stock, as referred to in the preceding letter, from Markin. I will not read any of that exhibit.

I offer as Government's Exhibit 198, a letter dated December 21, 1935 from Lee A. Kelley to Waverly.

(Said document, so offered and received in evidence, was marked Government's Exhibit 198.)

Mr. WILLIAMS: (Reading):

"I beg to advise you that I am purchasing from you, for a client of mine, 24,287 shares of the capital stock of Chicago Yellow Cab Company, Inc., at $12⅜ per share, payment to be made against delivery to my representative, The City National Bank of Chicago."

606 Mr. WILLIAMS: I will ask counsel whether they will stipulate and inform us on whose behalf Mr. Kelley purchased that stock, and who is the real owner of this particular stock, which, as I understand, still stands in Mr. Kelley's name on the books of Yellow.

Mr. LYNTON: You anticipate me, because I was going to ask you to identify Mr. Kelley. I will not stipulate that he was connected with any defendant, because I was advised that he was not.

Mr. WILLIAMS: We will try to make that connection then through our oral examination of witnesses.

Mr. LYNTON: Do you suggest that you will subsequently

proffer proof to show the connection between Mr. Kelley and any of these defendants?

Mr. WILLIAMS: Yes, we will.

Mr. LYNTON: You don't know who Mr. Kelly is?

Mr. WILLIAMS: Mr. Kelley, as I understand, is an attorney of Ottawa, Canada.

Mr. LYNTON: Based on that assumption, you, in your mind, link him to these defendants?

Mr. WILLIAMS: Perhaps the following exhibits will show the linkage, some of them.

Mr. LYNTON: Do they?

Mr. WILLIAMS: They do.

607 Mr. LYNTON: I move to strike this on the basis of incompetency as well as upon all the standing objections.

The COURT: The court will reserve its ruling.

Mr. WILLIAMS: I will not offer Government's Exhibit 199 marked for identification.

I offer as Government's Exhibit No. 200, a letter from R. H. Bieze, Treasurer of Chicago Yellow to Markin, dated May 4, 1945.

(Said document, so offered and received in evidence was marked Government's Exhibit 200.)

Mr. LYNTON: Before reading 200, may I have the record note that my objections and observations with respect to 199 are the same with respect to 198?

Mr. WILLIAMS: I did not offer 199.

Mr. LYNTON: Oh, I thought you did. I am sorry. Your voice was a little bit indistinct back here. I thought you said you were not reading it.

Mr. WILLIAMS: Government's Exhibit 200 reads:

"As you know, Chicago Yellow Cab Company, Inc., annual stockholders meeting will be held in New York on Tuesday, May 15, 1945.

"Up to today, we have received proxies
608 on 73,345 shares which would not be sufficient to hold a meeting.

"The proxy of Parmelee Transportation Company covering 75,930 shares and the proxy of L. A. Kelley covering 24,287 shares, have not been received."

I offer Government's Exhibit 201, a letter from Helen Logan to Markin.

Mr. LYNTON: I object to that as being incompetent as well as all the standing objections. May I ask you to identify Miss Logan?

Mr. Williams: Government's Exhibit 201 is written on the stationery of the law offices of Pruitt, Hale & Coursen, of New York. Mr. Pruitt at that time had some connection with Yellow Cab, did he not, or some of these companies?

Mr. Lynton: I make no concession of that at all.

Mr. Williams: The important point here is that the proxy was delivered to Mr. Markin, and we expect to offer evidence through oral examination of witnesses that will connect Mr. Markin with Mr. Kelley.

Mr. Lynton: Has the government made any investigation as to who Mr. Kelley is?

Mr. Williams: We have some information con-
609 cerning Mr. Kelley.

Mr. Lynton: Can you, from that information, state who he is?

Mr. Williams: Yes. He is an attorney in Ottawa, Canada.

Mr. Lynton: Have you any information which connects him with any of these defendants?

Mr. Williams: We have.

Mr. Lynton: What is that information?

Mr. Williams: I am not under oath. I would rather—

Mr. Lynton: No, I am not asking you that. In other words, you make a proffer of proof with respect to your ability to connect him.

Mr. Williams: I suggest if you have any objection, you make it, and we will argue it.

Mr. Lynton: My objection is made on the basis you cannot have any connecting evidence; you cannot make a proffer of proof on this point, because there is not any connection.

Mr. Williams: I would like to go back to page 283 of the excerpts, Exhibit 195, and call the attention of counsel and the court to a statement in the letter of Mr. Green, in which he states:

610 "With respect to the sale of not to exceed 27,000 shares to others, we understand that the purchaser will not be an officer or director of The Waverly Corporation or any of its affiliates and that no such officer or director will have any interest in such purchase. We understand, however, that the purchaser or his associates own a minority interest in the stock of Chicago Yellow Cab Company, Inc., and may in some direct or indirect manner be associated with corporations which

directly or indirectly own a substantial, although a minority, block of stock of Chicago Yellow."

Mr. LYNTON: What does that prove?

Mr. WILLIAMS: We find the sale to Mr. Kelley was 24,287 shares, or approximately this amount.

Mr. LYNTON: There is a disclaimer here.

Mr. WILLIAMS: We are here inquiring into the control of Chicago Yellow by Markin and Parmelee, and we expect to show that this stock is owned by persons who are closely connected with Mr. Markin, even by Mr. Markin himself, through the nominee, Kelley, and that it is combined with the Parmelee stock, showing additional stock control
611 of Chicago Yellow.

Mr. LYNTON: You see, Mr. Williams, you are completely wrong on the facts, and my point in making you state this is because it is illustrative of a number of instances upon which you are speculating without having any possibility of connecting proof, and I object to it on that ground.

The COURT: Well, if it is not connected up, it will be stricken.

(Said document, so offered and received in evidence, was marked Government's Exhibit 201.)

Mr. WILLIAMS: I have offered Government's Exhibit 201, which is a letter of April 20, 1945 from Helen Logan to Markin.

Mr. LYNTON: I have already made my objection with respect to that document.

Mr. WILLIAMS: I offer Government's Exhibit 202, Minutes of Directors' Meeting of Chicago Yellow, dated April 16, 1936. I will not read that. They resolve to submit to the stockholders' meeting a question of not disposing of 100,000 shares of Chicago Yellow stock which were held by Waverly unless it is disposed of to Chicago Yellow
612 or one of its subsidiaries.

(Said document, so offered and received in evidence, was marked Government's Exhibit 202.)

Mr. WILLIAMS: I offer as Government's Exhibit 203 minutes of directors' meeting of Chicago Yellow dated July 16, 1936.

(Said document, so offered and received in evidence, was marked Government's Exhibit 203.)

Mr. WILLIAMS: It reads, beginning on page 294:

"Mr. Benjamin Samuels, President of the corporation, acted as chairman of the meeting, and Mr. R. H. Bieze, Secretary of the corporation, acted as secretary.

"The chairman stated that all of the directors present at this meeting had been present at the meetings of the directors and stockholders of The Waverly Corporation held immediately preceding this meeting."

Then follows the resolution approving the plan to liquidate Waverly.

Another resolution is discussed at the bottom of page 294 for diminishing Chicago Yellow's capital stock from
613 400,000 shares to 300,000 shares, and a resolution was made to that effect.

I offer as Government's Exhibit 204, letter from Arthur Young to Samuels with certain attachments.

(Said document, so offered and received in evidence, was marked Government's Exhibit 204.)

Mr. WILLIAMS: It reads:

"The Waverly Corporation, a wholly owned subsidiary of Chicago Yellow Cab Company, Inc., surrendered all of its assets, subject to its liabilities, to its parent company on July 31, 1936. In exchange for the net assets so surrendered the Waverly Corporation received all of its capital stock and was dissolved. Stockholders of The Waverly Corporation authorized these actions at a special meeting held on July 17, 1936.

"Submitted as Exhibit A is a balance sheet of The Waverly Corporation as at July 31, 1936, and as Exhibit B is a statement of profit and loss and surplus for the period from December 31, 1935 to July 31, 1936."

614 Mr. WILLIAMS: I offer as Government's Exhibit 205 a letter from Bieze, Treasurer of Yellow, to Oakland of CCM, there being attached to it a letter dated September 5, 1940 to William J. Campbell, then United States District Attorney, from the firm of Kirkland, Fleming.

(Said document, so offered and received in evidence, was marked Government's Exhibit 205.)

I wish to read beginning at the top of page 296:

"(a) Briefly the history of this case is as follows: Prior to 1931 Yellow Cab Company, a wholly owned subsidiary of Chicago Yellow Cab Company, Inc., had purchased 61,565 shares of its parent company in the open market, at prices ranging from $43.44 per share to $9.00 per share. In 1931 Yellow Cab Company sold 60,000 of the shares of Chicago Yellow Cab Company, Inc. to The Waverly Corporation at $10.00 per share, which was approximately the market value of the

shares at the time of the sale. Yellow Cab Company thus incurred a loss of $950,485.19, which was deducted by the taxpayers in their 1931 Income Tax Return. The Commissioner of Internal Revenue challenged this deduction on the grounds that for income tax pur-
615 poses the sale was not effective . . . This suit by the taxpayers for the refund followed. The only issue of consequence in the case is the validity, for income tax purposes, of the sale of shares of Chicago Yellow Cab Company, Inc. in 1931 by Yellow Cab Company to The Waverly Corporation. At the time of the sale The Waverly Corporation, a Delaware corporation, had an authorized capital stock of 2,600 shares of First Preferred Stock, 1,000 shares of Second Preferred Stock and 6,000 shares of Common Stock. At the time of the sale First Chicago Corporation, an Illinois corporation in which neither the Waverly Corporation, Chicago Yellow Cab Company, Inc. or any of its subsidiaries had any interest, owned and held all of the First Preferred Stock and all of the Second Preferred Stock of the Waverly Corporation, and Yellow Cab Company owned and held all of the Common Stock of The Waverly Corporation. Such First Preferred Stock, Second Preferred Stock and Common
616 Stock were issued to such owners and holders for cash."

I will skip over to page 297 and begin several lines down:

"On September 25, 1929 the City Council of the City of Chicago adopted an ordinance providing for the licensing and regulation of taxicabs through the Public Vehicle License Commission. Pursuant to this ordinance the Commission created thereby undertook an investigation of the affairs of Yellow Cab Company with a view of determining the financial responsibility, the public necessity and convenience of its operations and the fairness of its rates. Such an investigation was a new experience for the taxpayers. Prior to that time no inquiry had been made into the fairness of its rates or the public necessity and convenience of its operation. It became immediately apparent to the management that the company's investment in the shares of its parent would become, as it did become, a controversial subject in the Commission's investigation. Especially vulnerable was the company in view
617 of the high prices which had been paid for the shares of the parent company. Equally difficult to explain

was the investment of operating funds in the acquisition of the parent company's shares. These anxieties naturally led to the conclusion to remove the shares from the company's assets and realize the loss with which the company was faced. The sale of the shares at that time on the open market would have unnecessarily depressed values for the stockholders of the parent company. To accomplish the purposes of disposition and realization of loss and at the same time protect the market against such a depression The Waverly Corporation was organized into which was invited the outside stockholder. We will urge that these purposes were real and that the motives of the taxpayers were sincere. We doubt that the court will undertake to weigh their merit beyond the point of recognizing their existence about which there can be no serious controversy. The business aspect of the transaction was a matter within the discretion of the management into which in the absence of abuse the court will not
618 inquire."

Mr. Williams: I offer as Government Exhibit 206—

Mr. Lynton: Before you proceed, the government has now offered a document which states the purpose of the Waverly Corporation, and the purpose is stated:

"To accomplish the purposes of disposition and realization of loss and at the same time protect the market against such a depression the Waverly Corporation was organized into which was invited the outside stockholder."

On the basis of that statement, I move to strike not only this document, but every document in this case relative to the Waverly Corporation as being affirmatively unrelated to the defendants in this case.

Mr. Williams: We object to the motion on the ground that this exhibit shows what the defendants said their reason was, but the other exhibits which we have put in show that is not the reason.

The Court: The court will reserve his ruling.

Mr. Williams: I offer as Government's Exhibit 206 Plaintiff's Interrogatory No. 23, directed to all de-
619 fendants.

(Said document, so offered and received in evidence, was marked Government's Exhibit 206.)

Mr. Williams: It reads:

"Did you at any time during the period from December 15, 1931 to August 1, 1936 own directly or in-

directly, any shares of the capital stock of The Waverly Corporation? If so, state:

"(a) The date of each acquisition of such stock by you, the amount of stock acquired by each acquisition, the name of the seller, and the consideration paid;

"(b) The date of each sale and other disposition by you, directly and indirectly of such capital stock, the amount of stock involved in each transaction, the name of the buyer, and the consideration received."

Then I offer the various answers of the defendants to this interrogatory.

I offer as Government's Exhibit 207 the answer of Yellow.

(Said document, so offered and received in evi-
620 dence, was marked Government's Exhibit 207.)

Mr. WILLIAMS: I offer as Government's Exhibit 208 the answer of Chicago Yellow.

(Said document, so offered and received in evidence, was marked Government's Exhibit 208.)

Mr. WILLIAMS: I offer as Government's Exhibit 209 the answer of Markin.

(Said document, so offered and received in evidence, was marked Government's Exhibit 209.)

Mr. LYNTON: May the record show at this point the standing objections.

Mr. WILLIAMS: Is that at the end of these offers or beginning with the offer of 207?

Mr. LYNTON: No, the standing objections applied continuously for all documents since I made the standing objections through Government's Exhibit 209.

Mr. WILLIAMS: I will not read these various answers to this interrogatory concerning stock ownership, except to point out to the court that all the buyers and sellers are persons whose names have appeared as officers of the various companies involved in this case.

621 Mr. Hotchkiss will take over the next exhibit.

Mr. HOTCHKISS: The next block of exhibits deals with a matter of information on answers to plaintiff's interrogatories on stockholdings, directors and officers of the defendant corporations and their affiliated companies.

Now, Government's Exhibit No. 210 is Plaintiff's Interrogatory No. 9 directed to Chicago Yellow, Parmelee and Yellow.

(Said document, so offered and received in evidence, was marked Government's Exhibit 210.)

Mr. Hotchkiss: Yellow need not answer paragraph (a) and (b).

Proceeding, "With respect to your denial of the allegations in paragraph 23 of the amended complaint, state:"

Then the interrogatory requests information relative to the number of shares of stock outstanding, the shareholders having more than a thousand shares of stock, the meeting of the stockholders, the proxies, names of directors and information of that sort.

622 Government's Exhibit 211 is Parmelee's answer to Plaintiff's interrogatory No. 9, (a) (1), (2), (3) and (4).

(Said document, so offered and received in evidence, was marked Government's Exhibit 211.)

Mr. Hotchkiss: Government's Exhibit 212 is Parmelee's answer to Interrogatory No. 9, (a) (5).

(Said document, so offered and received in evidence, was marked Government's Exhibit 212.)

Mr. Hotchkiss: Government's Exhibit 213 is Parmelee's answer to Plaintiff's Interrogatory No. 9 (b).

(Said document, so offered and received in evidence, was marked Government's Exhibit 213.)

Mr. Hotchkiss: I will simply refer now to the other exhibits.

Government's Exhibits 214 to 221, inclusive, consist of various answers of the defendants to Plaintiff's Interrogatory set forth in Government's Exhibit No. 210.

(Said documents, so offered and received in evi-
623 dence, were marked Government's Exhibits 214, 215, 216, 217, 218, 219, 220, and 221.)

Mr. Hotchkiss: Government's Exhibit 222 consists of Plaintiff's Interrogatory No. 10, addressed to Chicago Yellow, Cab Sales, Parmelee, Checker and CCM.

(Said document, so offered and received in evidence, was marked Government's Exhibit 222.)

Mr. Hotchkiss: It states:

"State, with respect to each of your respective companies, the names of all officers and directors (giving title of office), 1929 to 1946, inclusive, the date each was elected to his respective office, and the date each resigned or retired from each office."

Then Government's Exhibit 223 is CCM's answer to plaintiff's Interrogatory No. 10.

Government's Exhibit 224 is Parmelee's answer; 225 is Chicago Yellow's answer; 224 is Yellow's answer; 227 is Cab Sales' answer; and 228 is Checker's answer.

(Said documents, so offered and received in evi-
624 dence, were marked Government's Exhibit 223, 224, 225, 226, 227 and 228.)

Mr. Hotchkiss: Government's Exhibit 229 is Plaintiff's Interrogatory No. 13 directed to Parmelee.

(Said document, so offered and received in evidence, was marked Government's Exhibit 229.)

Mr. Hotchkiss: It asks for information, the names of all officers and directors of Parmelee's subsidiaries from 1929 to 1946.

The next is Government's Exhibit No. 230, which consists of Parmelee's answer to Plaintiff's Interrogatory 13.

(Said document, so offered and received in evidence, was marked Government's Exhibit 230.)

Mr. Hotchkiss: The next is Government's Exhibit No. 231, Plaintiff's Interrogatory No. 11.

(Said document, so offered and received in evidence, was marked Government's Exhibit 231.)

Mr. Hotchkiss: It asks CCM for the names of the executive committee of the Board of directors during the
625 designated period of time, and for the functions and duties of such committee.

Government's Exhibit 232 is CCM's answer to that interrogatory.

(Said document, so offered and received in evidence, was marked Government's Exhibit 232.)

Mr. Hotchkiss: Next we come to a section dealing with the organization of Utilities Motor Fuel Company as a subsidiary of Chicago Yellow, sales to Yellow, Cab Sales, Checker and Parmelee.

Government's Exhibit No. 233 consists of the minutes of the directors' meeting of Chicago Yellow, dated November 18, 1937.

Mr. Lynton: Here I should like to reinstate the standing objections of the defendants, which objections, for the purpose of the record, are objections as to competency, particularly that none of the documents are binding upon any defendant except the defendant who prepared the document, and in addition the standing objections consist of those based upon questions of relevancy and materiality. In addition to the standing objections, if your Honor please, I have a particular objection with respect to this gasoline and oil company. This is a company which

626 sells gasoline and oil to various customers, including some of the companies in this suit, which operate cabs. I suggest again that there is no basis upon which there can be a connection made in this case. Does the government wish to state how this document becomes relevant?

Mr. Hotchkiss: If defense counsel wishes, I will be happy to state at this time what, in general, the connection is.

Mr. Lynton: Yes.

Mr. Hotchkiss: It should be borne in mind that at the time the minutes were written, November 18, 1937, Yellow was operating under a management contract with Parmelee. These minutes are connected up with other information showing that certain officers and directors and other representatives of Parmelee were on the board of directors of Chicago Yellow, that they were controlling the actions of Chicago Yellow.

Mr. Lynton: Is that your point?

Mr. Hotchkiss: That is connection—may I please complete?

Mr. Lynton: Excuse me, I thought you were through. Go ahead.

627 Mr. Hotchkiss: That Parmelee was controlling the actions of this company, and in connection with that control, permitted the establishment of this subsidiary of Chicago Yellow, which was to engage in the purchase and sale of gasoline, which gasoline was to be sold, not just to Yellow, but we have a horizontal sale of that gasoline to Yellow, to Cab Sales, to Parmelee, interstation.

Mr. Lynton: To outsiders?

Mr. Hotchkiss: If you want to add outsiders.

Mr. Lynton: It is right in your exhibit.

Mr. Hotchkiss: If you want to add outsiders, you may do so. I refer to sale to these three organizations, and the document is relevant showing the control extended by Parmelee down through Chicago Yellow and Yellow structure, even extending down into this matter of the sale of this gasoline.

Mr. Lynton: If your Honor please, I think there is a conclusive answer to this. The last series of answers to the interrogatories of the plaintiff list every officer and every director of these companies from 1929 to the date of the commencement of the suit. Therefore, any argu-

mentation that the government cares to indulge
628 in, by reason of that fact—one individual may hold a position in more than one company at the same time.

With respect to the management contract between Parmelee and Yellow at this time, that is in evidence. There is no question about it. What relationship this problem of the formation of a subsidiary to sell gasoline has to do with the issues in this case, I cannot fathom, and I do not think the government has suggested any linkage.

The Court: It will be received subject to being connected up.

(Said document, so offered and received in evidence, was marked Government's Exhibit 233.)

The Court: The court will now adjourn until tomorrow morning.

(Whereupon an adjournment was taken until 10 o'clock a. m. of the following day, Friday, May 21, 1948.)

629 No. 46 C 1339.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
YELLOW CAB COMPANY, *et al.*, DEFENDANTS.

Before Judge La Buy
Friday, May 18, 1948,
10:00 o'clock a. m.

Court met pursuant to adjournment.

Present:

Mr. Hotchkiss
Mr. Williams
Mr. Lynton
Mr. Ginsberg
Mr. Fuller
Mr. Climenko

By Mr. HOTCHKISS: I might explain, your Honor, that the next series of exhibits are offered by the Government in connection with somewhat limited objectives. They are offered primarily to show part of the integrated corporate structure that the defendants built up in pursuance of the conspiracy, and also to show the extent to which the Parmelee influence infiltrated down into the corporate structure.

630 I offer Government's Exhibit 233, consisting of minutes of directors' meeting of Chicago Yellow, dated May 18, 1937.

Mr. Lyston: May I have the record show I interpose all my standing objections with reference to this series?

The Court: Yes, let the record so show.

(Said document, so offered and received in evidence, was marked Government's Exhibit 233.)

Mr. Hotchkiss: The minutes deal with the organization of Utilities Motor Fuel Co., with Chicago Yellow holding all of the stock.

I point out that Mr. Paul L. Houston, Walter S. Laird and Levin Rank are among the directors of Chicago Yellow present at this meeting.

At page 303-A, at the top of the page, it shows that Utilities Motor Fuel has been authorized to enter into contracts with Yellow Cab Company, Cab Sales, Chicago Motor Coach and Benzoline, under which Utilities agrees to sell gasoline and other motor fuel products for a period of approximately one year.

I offer Government's Exhibit 234—

Mr. Lyston: May I invite the Court's attention
631 to this portion of the last Exhibit, No. 233, that the Utilities Corporation, and now I quote from page 303:

"had entered into a contract with Standard Oil Company,"

and I skip a little bit,

"for the trucking of gasoline to the garages of Yellow Cab Company and such other customers in Chicago as the Indiana corporation"—

That is, the Utilities Corporation—

"may obtain."

Mr. Hotchkiss: I offer Government's Exhibit 234, appearing on page 303-A of the excerpts, consisting of minutes of the directors' meeting of Yellow, dated November 18, 1937.

(Said document, so offered and received in evidence, was marked Government's Exhibit 234.)

Mr. Hotchkiss: Again I call attention to the fact that among the directors present there are Hogan, Samuels, Bieze, Stouffer, Houston, Laird and Rank. It constitutes the entire Board of Directors. Hogan acted as Chairman.

632 The Board approved the execution of a contract between Yellow and Utilities under which Yellow will purchase its gasoline from Utilities.

Next I offer Government's Exhibit 235, consisting of the minutes of directors' meeting of Utilities dated December 20, 1938.

(Said document, so offered and received in evidence, was marked Government's Exhibit 235.)

Mr. Hotchkiss: And here Utilities approves the execution of the contract with Yellow and Cab Sales and Parmelee relating to the sale of gasoline to those companies.

I offer Government's Exhibit 236, consisting of minutes of the directors' meeting of Utilities, dated October 19, 1939.

(Said document, so offered and received in evidence, was marked Government's Exhibit 236.)

Mr. Hotchkiss:

"The following directors were present:
Walter S. Laird
R. H. Bieze
Alfred H. Rhodes
constituting the entire Board of Directors.

633 "Mr. Walter S. Baird acted as Chairman of the meeting and Mr. R. H. Bieze acted as Secretary."

There again three new contracts are presented between Utilities, Yellow, Cab Sales and Parmelee relating to the sale of gasoline.

I offer Government's Exhibit 237, consisting of minutes of directors' meeting of Utilities, dated October 27, 1943.

(Said document, so offered and received in evidence, was marked Government's Exhibit 237.)

Mr. Hotchkiss: Here the directors present are Laird, Bieze and Rhodes, and the directors approve the agreement entered into between Utilities and Cab Sales, and another agreement between Utilities and Yellow, and a further agreement between Utilities and Parmelee, with respect to furnishing gasoline to those companies.

Now I come to a group of exhibits dealing with the organization of and shareholdings in the General Transportation Casualty and Surety Company.

I offer Government's Exhibit 238, consisting of a
634 letter from Rank, President of Parmelee, to Samuels, Vice-President of Yellow, dated November 13, 1937.

Mr. Lyxton: My standing objections continue not only with respect to this series, but, if the record may show,

they shall continue until I indicate to the contrary, on any series.

The Court: The record may so show.

(Said document so offered and received in evidence was marked Government's Exhibit 238.)

Mr. Hotchkiss: In this letter from Rank to Samuels, Mr. Rank states:

"I have just found time to write you regarding the understanding that I reached with Messrs. Sokoll and Markin on October 26th, 1937, relative to the subject of your letter of August 24th and Mr. Rattner's letter of July 22nd.

"As a result of this understanding, all accident claims or suits settled after October 26th, 1937, irrespective of the date when the accident occurred, involving a Yellow Cab and a Checker Cab in the same accident, will be paid in the following manner:

635 60%—of the total of the settlement by the Company whose passenger is making the claim.

40%—of the settlement by the other Company involved in the accident.

These proportions to be paid irrespective of liability."

Next I offer Government's Exhibit 239, consisting of minutes of directors' meeting of Parmelee, dated March 8, 1938.

(Said document, so offered and received in evidence, was marked Government's Exhibit 239.)

Mr. Hotchkiss: There were present Rank, Wyatt, Condon and Houston, with Rank presiding. There they discussed the organization of a new company to be called General Transportation Casualty Company.

"The Chairman then stated that a casualty company under the name of General Transportation Casualty Company was in the process of organization under the laws of the State of New York and that this Corporation had an opportunity to subscribe to a sub-

636 stantial although not a majority interest in the capital stock of the proposed company."

The Board then approved Parmelee investing in the stock of that company, and also, and I refer now to page 307:

"Resolved that as management advisers of Yellow Cab Company, a Maine corporation, and a wholly-owned subsidiary of Chicago Yellow Cab Company, Inc., this Corporation approve the investment by Chicago Yellow Cab Company, Inc. in 14,940 shares

of the par value of $10 each of the capital stock of General Transportation Casualty Company,"

and so forth.

637 Next I offer Government's Exhibit 240, consisting of a letter dated March 23, 1938, from Mr. Rank of Parmelee to Freimark, President of Cab Sales, in which he refers to the purchase by Parmelee of certain shares of stock in the Casualty Company, and states that 3,000 shares is for the allotment to Cab Sales.

(Said document, so offered and received in evidence, was marked Government's Exhibit 240.)

Mr. HOTCHKISS: Next I offer Government's Exhibit 241, consisting of the minutes of directors' meeting of CCM, dated July 20, 1938.

(Said document, so offered and received in evidence, was marked Government's Exhibit 241.)

Mr. HOTCHKISS: And here are present Markin, Oakland, King and Pruitt. These minutes deal, in the major part, with the acquisition by CCM of stock in this Casualty Company.

Incidentally, it also deals with the appointment of an executive committee to consist of Markin, Oakland and Pruitt, of which Markin is Chairman, to conduct the business and management of the affairs of the corpora-

638 tion during the intervals between meetings of the Boards of Directors.

Mr. LYSTON: That is the executive committe of CCM, isn't it?

Mr. HOTCHKISS: That is correct, CCM.

Next, I offer Government's Exhibit 242, consisting of the minutes of directors' meeting of Parmelee, dated July 25, 1938.

(Said document, so offered and received in evidence, was marked Government's Exhibit 242.)

Mr. HOTCHKISS: At this meeting:

"The Chairman then stated that in order to obtain additional working capital and cash to pay certain existing commitments of the Corporation and of its subsidiaries, he believed it advisable to sell and dispose of the holdings of the Corporation in General Transportation Casualty Company, * * *"

Then follows a resolution that the President is authorized to negotiate with CCM to sell this stock, Parmelee stock in the Casualty Company to CCM.

639 The next is Government's Exhibit 243, dated July 19, 1939, consisting of directors' meeting of CCM.

(Said document, so offered and received in evidence, was marked Government's Exhibit 243.)

Mr. HOTCHKISS: Present were Markin, Oakland, King and Pruitt. This bears on the fact of CCM purchased the stock referred to in the preceding Exhibit, No. 242.

I call your attention to a section just below the middle of page 310 of the excerpted portion, and I read:

"* * * it had been contemplated that the stock of said General Transportation and Casualty Company would be owned by the operating companies and not by this Corporation; that the purpose of purchasing the stock of General Transportation and Casualty Company from Parmelee Transportation Company was to provide the latter company with funds for the conduct of its business, * * *"

Mr. LYNTON: Will you finish that sentence, please?

Mr. HOTCHKISS: If you desire.

640 "* * * and at the same time afford this Company an investment for idle funds not then used in its business, and that the purpose in giving back to Parmelee Transportation Company an option on said stock was to enable it at any time within said two year period to reacquire the said shares of stock of General Transportation and Casualty Company at the said price of $17.00 per share, plus a reasonable carrying charge of 5 cents per share per month; * * *"

Then I offer Government's Exhibit 244, appearing on page 312 of the excerpts.

(Said document, so offered and received in evidence, was marked Government's Exhibit 244.)

Mr. HOTCHKISS: This is an agreement between CCM and Parmelee, and releases an option with respect to those 8,100 shares of the stock of General Transportation Casualty Company, and that Checker has bought, and then Checker grants Parmelee a further option to December 31, 1941, to purchase 9,350 shares, the option to be exercised as a whole only and not in part.

641 Next, Government's Exhibit No. 245, consisting of the minutes of directors' meeting of Cab Sales, dated September 28, 1939.

(Said document, so offered and received in evidence, was marked Government's Exhibit 245.)

Mr. HOTCHKISS: There was presented to this meeting a contract giving an option from Checker Cab Manufactur-

ing Company to Cab Sales with respect to some eleven thousand odd shares of the Casualty Company stock.

Next I offer Government's Exhibit 246, consisting of the minutes of a directors' meeting of Checker Cab Manufacturing Company, dated October 17, 1939, appearing at the top of page 314.

(Said document, so offered and received in evidence, was marked Government's Exhibit 246.)

Mr. Hotchkiss: And the second paragraph, marked No. 1:

"1. The Chairman stated that he now desired to submit to the Board for approval the corporation's production program and budget for the year 1940; that the management contemplated the production
642 of 250 taxicabs per month and the sale of said taxicabs to the operating companies in Chicago, New York City and Pittsburgh, in accordance with orders which had been obtained therefor, and which would be submitted to this meeting for approval; * * *".

Then he refers to the contracts, one, a contract with National Transportation Company for 2,000 taxicabs; another one with Cab Sales for 800 cabs; another one with Yellow Cab of Pittsburgh for 125 cabs, and another one with Pittsburgh Transportation Company for 125 cabs, and another one with Yellow Cab Company, 1200 cabs.

Then the meeting goes on to approve the option agreement that has been discussed previously between Parmelee and Checker with respect to its shares of stock in this Casualty Corporation.

I call your attention to page 315, the very last paragraph in this exhibit:

"6. Mr. Oakland next stated that this corporation's subsidiary, Parmelee Transportation Company, had on deposit with the Commissioner of Insurance of the State of New York, approximately $50,000 * * *"

I now offer Government's Exhibit 247.

643 (Said document, so offered and received in evidence, was marked Government's Exhibit 247.)

Mr. Lynton: Which corporation are you referring to when you mention the phrase, "this subsidiary"?

Mr. Hotchkiss: Mr. Oakland,—I call your attention to to the fact that I am reading from the minutes of the directors' meeting of CCM, and the minutes show that Mr. Oakland was present, and Mr. Oakland, while being present at the directors' meeting of CCM then stated, and I quote:

"That this corporation—"

And I assume by this corporation,—

Mr. Lynton: When you refer to CCM, I just want the record to show the relationship of the two corporations.

644 Mr. Hotchkiss: Does the record show it adequately?

Mr. Lynton: I think so.

Mr. Hotchkiss: Government's Exhibit 247 consists of a letter from Oakland of CCM to Sokoll of Checker dated October 31, 1939, and refers to the sale of the shares of stock in the casualty company.

(Said document, so offered and received in evidence, was marked Government's Exhibit 247.)

Mr. Hotchkiss: The next is Government's Exhibit 248 consisting of a letter from Kirkland, Fleming, Green, Martin & Ellis to Securities & Exchange Commission, with attachments.

Mr. Climenko: You are not offering Exhibit 247?

Mr. Hotchkiss: Yes, it is offered.

(Said document, so offered and received in evidence, was marked Government's Exhibit 248.)

Mr. Hotchkiss: Now, referring to the bottom of page 316 of the excerpts, and to the last paragraph on that page, it is stated:

"During the year a new company, namely, General Transportation Casualty Company (New York corporation), New York City, has been organized for
645 the purpose, among other things, of insuring taxicab companies against personal injury and property damage claims. It has a paid-in capital of $500,000, the subscribing stockholders being Chicago Yellow Cab Company, Inc. 49.8%, Cab Sales and Parts Corporation, Chicago 23.2% and Checker Cab Manufacturing Corporation 27%. On March 1, 1939 this Casualty Company took over this insurance for Yellow Cab Company formerly underwritten by Yellow Cab Mutual Insurance Company, which company it is proposed to liquidate after all claims arising out of accidents prior to March 1, 1939 have been satisfied.

"4. Also in the year 1938, a new company, namely, Transportation Maintenance Corporation, Chicago, has been organized for the purpose of repairing and maintaining principally the fleets of Yellow Cab Company, Chicago, Checker Taxi Company, Chicago, and Parmelee Transportation Company in Chicago, their re-

spective interests in the new company being 49% Yellow Cab Company, Inc.; 40% Checker Taxi Company; and 11% Parmelee Transportation Company, of the
646 capital stock of 500 shares of $100 par value. The company began operations on May 1, 1938 and from that date has served the Yellow Cab Company in maintaining and repairing its taxicab fleet."

Let the record now show I do not offer what has been marked as Government's Exhibit 249. It is withdrawn.

Next, I offer Government's Exhibit 250, consisting of a memorandum from C. P. G. Fuller regarding Casualty Company, dated October 31, 1941.

Mr. Lynton: In addition to the standing objections, the objection is made that this is a privileged communication between attorney and client.

The Court: Was the exhibit obtained—

Mr. Lynton: It is of the same character as those previously mentioned.

The Court: As those other so-called privileged communications?

Mr. Lynton: That is right.

The Court: The Court's ruling is the same.

(Said document, so offered and received in evidence, was marked Government's Exhibit 250.)

647 Mr. Hotchkiss: In this memorandum, they simply discuss the question of extending for Parmelee the option which it has to buy back from CCM this Casualty Company stock, and toward the bottom of page 317, I will read, that is the fourth line:

"Mr. Markin further stated that he did not feel that Parmelee would be in a financial position sufficient to take up the option for some years to come, in view of increased costs of doing business, and that any extra cash that Parmelee had should be applied to the retirement of its outstanding debentures, which are selling at a substantial discount.

"I reported to Mr. Wyatt that it seemed impossible to get an extension and that the matter might as well be abandoned."

Mr. Lynton: Will you read the two preceding sentences before the sentence you read from that exhibit?

Mr. Hotchkiss: Certainly. I will read from the beginning, so that it is all in the record:

"The option granted by Checker to Parmelee on 9,180 shares of the capital stock of the above com-

648 pany expires December 31, 1941. The Board of Directors at their meeting held on October 18, 1941, determined that the cash position of Parmelee was such as to make it impossible to permit Parmelee to exercise the option at this time. However, I tentatively discussed with both Mr. Markin and Mr. Oakland, the desirability from Parmelee's point of view, of having the option extended for another year. Both Mr. Markin and Mr. Oakland took the position that they had already extended the option once and that unless Parmelee paid a substantial consideration, they felt that they would be derelict in their duty to the Checker stockholders in consenting to a further extension of the option, particularly in view of the fact that the option would have to be fully reported on the various S. B. C. reports that Checker and Parmelee would file."

Mr. Lynton: The word is "delinquent" instead of "derelict."

Mr. Hotchkiss: Next is Government's Exhibit No. 251, consisting of the Minutes of Directors Meeting of Chicago Yellow, dated March 23, 1944.

649 (Said document, so offered and received in evidence, was marked Government's Exhibit 251.)

Mr. Hotchkiss: (Reading)

"Upon motion of Mr. Wyatt, duly seconded by Mr. Samuels, the following preambles and resolution were unanimously adopted."

And it recites that this company is the owner of 12,390 shares, being 49.8% out of a total of 55,000 shares outstanding of the capital stock of the Casualty Company, and then toward the end, it is resolved that this company approve the issuance by the Casualty Company of additional shares and that this company, that is Chicago Yellow, is authorized to acquire a portion of the additional shares so issued.

Next is Government's Exhibit 252, consisting of the minutes of a directors' meeting of CCM, dated March 23, 1944.

(Said document, so offered and received in evidence, was marked Government's Exhibit 252.)

Mr. Hotchkiss: There were present at the meeting Markin, Oakland, King and Snow.

650 There is a reference to the casualty stock, and the fact that the officers of the corporation had bought for the account of CCM additional stock. And the directors thereupon approved that purchase.

The next is Government's Exhibit No. 253, a letter from Wyatt, Treasurer of Parmelee, to C. P. G. Fuller, dated March 30, 1944.

Mr. LYNTON: In addition to the standing objections, there is an objection on the question of privilege due to the attorney-client relationship. It is of the same category as the last objection made.

(Said document, so offered and received in evidence, was marked Government's Exhibit 253.)

Mr. HOTCHKISS: Mr. Wyatt is simply stating that one of the items to be approved at the next meeting of the board of directors is the purchase of certain shares of stock of the casualty company.

Government's Exhibit 254 consists of Plaintiff's Interrogatory No. 26, addressed to all of the defendants.

(Said document, so offered and received in evidence, was marked Government's Exhibit 254.)

651 Mr. HOTCHKISS: It states:

"With respect to your denial of certain allegations of paragraph 47 of the amended complaint, state:

"(a) The name of the company or companies that have insured your operations against personal injury and property damage claims each year from 1935 to 1946, inclusive:

"(b) The date of each acquisition by you, and your wholly owned subsidiaries, directly and indirectly, of capital stock of General Transportation Casualty Company, the amount of stock acquired by each acquisition, the name of the seller, and the consideration paid."

Government's Exhibit 255 consists of CCM's answer to Plaintiff's Interrogatory No. 26. I will not read it.

(Said document, so offered and received in evidence, was marked Government's Exhibit 255.)

652 Government's Exhibit 256 consists of Markin's answer to plaintiff's interrogatory No. 26.

(Said document, so offered and received in evidence, was marked Government's Exhibit 256.)

Mr. HOTCHKISS: Government's Exhibit 257 consists of Parmelee's answer to plaintiff's interrogatory No. 26.

(Said document, so offered and received in evidence, was marked Government's Exhibit 257.)

Mr. HOTCHKISS: Government's Exhibit 258 consists of Chicago Yellow's answer to this interrogatory.

(Said document, so offered and received in evidence, was marked Government's Exhibit 258.)

Mr. Hotchkiss: Government's Exhibit 259 consists of Yellow's answer to this interrogatory.

(Said document, so offered and received in evidence, was marked Government's Exhibit 259.)

Mr. Hotchkiss: Government's Exhibit 260 consists of Cab Sales' answer to this interrogatory.

653 (Said document, so offered and received in evidence, was marked Government's Exhibit 260.)

Mr. Hotchkiss: Government's Exhibit 261 consists of Checker's answer to this interrogatory.

(Said document, so offered and received in evidence, was marked Government's Exhibit 261.)

Mr. Hotchkiss: Then I offer Government's Exhibit 262, consisting of a letter from Rank to Wyatt, dated October 25, 1939.

(Said document, so offered and received in evidence, was marked Government's Exhibit 262.)

Mr. Hotchkiss: It states that he is enclosing a check of Cab Sales to cover the purchase price of stock in Transportation Maintenance Corporation, and continues and states that he understands that Cab Sales desires Wyatt to remain as nominee, and would like the usual letter disclaiming interest.

Government's Exhibit 263 is a letter from Wyatt to Sokoll of Cab Sales, with attachments, dated November 8, 1939.

(Said document, so offered and received in evi-
654 dence, was marked Government's Exhibit 263.)

Mr. Hotchkiss: It is regarding the sending of 55 shares of stock of the Maintenance Corporation and disclaiming personal interest.

Next is Government's Exhibit 264, plaintiff's interrogatory No. 27.

(Said document, so offered and received in evidence, was marked Government's Exhibit 264.)

Mr. Hotchkiss: It is directed to Yellow, Parmelee Cab Sales and Checker:

"With respect to your denial of certain allegations of paragraph 48 of the amended complaint, state:

"(a) The consideration paid by you each year from 1938 to 1946, inclusive, to Transportation Maintenance Corporation for the repair and maintenance of motor vehicles;

"(b) The consideration paid by you to companies other than Transportation Maintenance Corporation each year from 1935 to 1946, inclusive, for the purpose

of repair and maintenance of motor vehicles, stating how much was paid to companies affiliated with you,
655 naming those companies, and stating how much was paid to companies not affiliated with you."

Government's Exhibit 265 consists of Yellow's answer to plaintiff's interrogatory No. 27.

(Said document, so offered and received in evidence, was marked Government's Exhibit 266.)

Mr. Hotchkiss: Government's Exhibit 266—And I might say here it states during the period from 1935 to April 30, 1938, Yellow Cab Company performed its own repair and maintenance services, and from the period from April 30, 1938, to 1936, inclusive, all the taxicab repair and maintenance services was performed by Transportation Maintenance Corporation.

656 I offer Government's Exhibit 266, being Cab Sales answer to plaintiff's interrogatory No. 27.

(Said document, so offered and received in evidence, was marked Government's Exhibit 266.)

Mr. Hotchkiss: There Cab Sales likewise says:

"During the period 1935-April 30, 1938, Cab Sales performed its own taxicab repair and maintenance services and paid no sums to others for repair or maintenance of taxicabs. During the period May 1, 1938-1946, all taxicab repair and maintenance services for Cab Sales were performed by Transportation Maintenance Corporation, except as indicated in the next sentence, * * * "

Next I offer Government's Exhibit 267, consisting of Checker's answer to plaintiff's interrogatory No. 27, and the answer is:

"None."

(Said document, so offered and received in evidence, was marked Government's Exhibit 267.)

I offer Government's Exhibit No. 268, being Par-
657 melee's answer to plaintiff's interrogatory No. 27, and I shall not read it.

(Said document, so offered and received in evidence, was marked Government's Exhibit 268.)

Mr. Hotchkiss: Then we come, on page 324, to a group of exhibits dealing with TMC—PARMELEE——CCM control of Yellow's and Chicago Yellow's fiscal and general operating policy, and the sub-heading under that, "Chicago Yellow loans to Checker Cab Manufacturing."

I offer Government's Exhibit 269, consisting of minutes of directors' meeting of Chicago Yellow, dated April 1, 1938,

(Said document, so offered and received in evidence, was marked Government's Exhibit 269.)

"The chairman stated that in addition to the sum of $250,000.00 which, by resolution adopted at this meeting, had been authorized to be invested in stocks, this corporation had other available funds to loan, and that Checker Cab Manufacturing Corporation had proposed that it borrow from this corporation $366,000.00, * * * "

Then the board approves such a loan and,
658 at the top of page 325, resolves that Chicago Yellow—

"accept as security * * * the pledge of not less than $608,000.00 in aggregate principal amount of installment purchase obligations signed by purchasers, in good standing, in respect of 1619 taxicabs * * * "

Mr. Lynton: Would you mention the interest paid along those lines?

Mr. Hotchkiss: Yes, certainly.

Back on page 324, immediately following the portion which I have read, which ended with "borrow from this corporation $366,000," it continues, "payable $46,000 on April 30, 1938, and $40,000 on the last day of each month thereafter until said loan has been paid, with interest at 5% per annum, * * * "

Five per cent again.

I offer Government's Exhibit 270, consisting of a letter from Bieze, Treasurer of Chicago Yellow, to Oakland, Vice President of Checker Cab Manufacturing Company, dated December 17, 1938.

659 (Said document, so offered and received in evidence, was marked Government's Exhibit 270.)

Mr. Hotchkiss: This is an acknowledgment of the receipt of final payment on this loan of $366,000, and the note is returned marked "Paid," and there is also returned "the collateral and notes which were turned over to us as per schedule marked 'Schedule of National Transportation Co., Notes Held as Collateral on Checker Cab Mfg. Corp., Note of $366,000' * * * "

I offer Government's Exhibit 271, consisting of agreement of Checker Cab Manufacturing Company, dated December 31, 1938.

(Said document, so offered and received in evidence, was marked Government's Exhibit 271.)

Mr. Hotchkiss: Under this agreement Chicago Yellow agrees to pay notes in the amount of $400,000 from Checker

Cab Manufacturing Company, these notes having been executed by National Transportation Company, which the record shows is a subsidiary of Parmelee, and with CCM, guaranteeing the notes.

Next we come to a section starting at the top of
660 page 326 dealing with miscellaneous acts of control by the Parmelee group over the companies in Chicago.

Mr. LYNTON: For the record, when you assert, which of course we deny certain control by the Parmelee group over the companies in Chicago, who is within the Parmelee group and who is within Chicago?

661 Mr. HOTCHKISS: I indicated the other day who within the Parmelee group, and I repeat it. When I state the Parmelee group I am referring to the Parmelee Transportation Company, Checker Cab Manufacturing Company Mr. Markin, as being—

Mr. LYNTON: Just those?

Mr. HOTCHKISS: —as being the ones, the primary ones having control and the top persons and organizations in the control structure.

Now, there are other individuals of course who act as—

Mr. LYNTON: I don't want an argumentation. All I want, for the record, is—you have made the assertion here you will read these documents for a particular reason, and you have defined the documents as indicating, according to your argumentation, a control by the Parmelee group of certain Chicago companies.

I merely want to have the record clear as to the persons you include within the Parmelee group for this purpose only, and what persons you include within the Chicago group.

By Mr. HOTCHKISS: By the Chicago group I am referring to Chicago Yellow, Yellow, Cab Sales, Checker and—

662 Mr. LYNTON: Checker Taxi?

Mr. HOTCHKISS: Checker Taxi, and the persons who are officers or directors of those companies, and I further suggest that the record itself as read will disclose these facts in detail, and we will let the record—I might also say, the subsidiaries of the last-named group of companies.

Mr. LYNTON: And by the Parmelee group, for this purpose, I understand you to mean CCM, Mr. Markin and Parmelee, is that right?

Mr. HOTCHKISS: I asserted a little wider scope than that.

Mr. LYNTON: Would you include your additional assertion, so that I may understand it?

Mr. HOTCHKISS: If the reporter will read back my original statement—

The COURT: Referring to the Chicago group?

Mr. HOTCHKISS: Parmelee.

The COURT: The Court will recess for ten minutes.

(Recess taken.)

Mr. HOTCHKISS: May it please the Court—

Mr. LYNTON: Shall we just clarify this?

The reporter has given us a short excerpt of the sentence or two that I referred to, and I will read it.

663 "Mr. HOTCHKISS:—as being the ones, the primary ones having control and the top persons and organizations in the control structure.

Now, there are other individuals of course who act as—"

And it was that question I had, whether we were confined to the specific persons or whether it extended to other persons.

Mr. HOTCHKISS: I think my answer:

"—as being the ones, the primary ones having control and the top persons and organizations in the control structure,"—

that is the control structure consisting of Markin, CCM, Parmelee. Parmelee, of course, controlled certain subsidiaries. The primary top control structure consists of persons and organizations in that group.

Mr. LYNTON: And I will ask one last question; and I will cease this.

Mr. HOTCHKISS: However, I want it understood at this time the Government is offering this evidence against all of the defendants in the case for the purpose of establishing the combination and conspiracy alleged in the complaint.

664 I would like to read a short excerpt from Justice Murphy's opinion in the case, United States v. Yellow Cab Company, appearing at page 227 of the U. S. Report.

Mr. LYNTON: If I may interrupt, I had no intention to get into a legal argument here as to whether these documents indicate what you contend they do, or anything else.

All I wanted to know is, when you used a general phrase what persons you included within that phrase. I have no other purpose.

Mr. HOTCHKISS: I have advised you. And as to the—

Mr. LYNTON: My other question is that, since the document you now propose to offer is dated June 18, 1943, whether your references to this so-called control group relate to that period.

Mr. HOTCHKISS: Relate to that period also.

Mr. LYNTON: All right, I have nothing further.

Mr. HOTCHKISS: I offer Government's Exhibit 272, consisting of a letter from Samuels of Chicago Yellow to Albert L. Marks, dated June 18, 1943.

(Said document, so offered and received in evidence, was marked Government's Exhibit 272.)

Mr. HOTCHKISS:

665 "My attention has been called to the fact that when you sent in your proxy, in connection with the Annual Meeting of our corporation, you wrote an inquiry asking for certain information in connection with the contract of the Parmelee Transportation Co.

"Our contract with the Parmelee Transportation Co. is what is commonly known and described as a management contract. In the good old days, when Mr. Hertz was the Chairman of our Board, he was paid $100,000.00 for his services as an adviser in the operation of this company.

"The Parmelee Transportation Co. owns 27% of all outstanding capital stock of our company and furnishes us with special information along the following lines.

"Mr. Sinnott, one of our Directors, gives us the benefit of his experience in the practical operation of taxicab companies because the Parmelee Co. is actively engaged in a number of taxicab operations in several large cities.

"Mr. Wyatt, also one of our Board members, is
666 constantly advising us with reference to many financial phases of our operation.

"Mr. Walter Laird, who is one of the Directors of Parmelee, and also one of the Directors of the Yellow Cab Company, our operating subsidiary, is constantly in touch with our operation, particularly in the matter of arranging for our gasoline contracts, which is his particular field, not only for us but for Parmelee as well and all of its subsidiaries.

"Mr. King, another member of the Parmelee organization, is in charge of the matter of mechanical condition of our equipment.

"In addition thereto, all of these men serve individually in their respective positions on our Boards without compensation, and the Parmelee Co. pays all of their expense in connection with the attendance at our meetings.

"I hope that this will give you a bird's-eye view of the Parmelee Transportation Co., in connection with our operation.

667 "It should also be called to your attention that when we first negotiated the management contract we were paying Parmelee an annual fee of $75,000.00 per year. This has been steadily reduced until now it is $36,000.00 per year.

"We regard the services rendered by Parmelee of immense value and worth considerably more. One of the most direct benefits is that Parmelee advises us daily of various items that enter into the cost of operation, so that we receive information daily so that we may check all of the elements in our operation."

Mr. LYNTON: One of the sentences in this last document, No. 272, that you have read, reads as follows:

"In the good old days, when Mr. Hertz was the Chairman of our Board, he was paid $100,000.00 for his services as an adviser in the operation of this company."

Will you stipulate that that Mr. Hertz was John D. Hertz?

Mr. HOTCHKISS: If that is the fact, I will so stipulate.

668 Mr. LYNTON: I state that is the fact.

Mr. HOTCHKISS: Very well.

Mr. LYNTON: Will you also stipulate that Mr. Hertz was the Chairman of the Board of Chicago Yellow during a period prior to the organization of Parmelee and prior to the sale of any of the shares of stock of Chicago Yellow to Parmelee?

Mr. HOTCHKISS: If that is a fact, I am willing to stipulate it.

Mr. LYNTON: It is a fact.

Mr. HOTCHKISS: I offer Government's Exhibit 273, consisting of a letter from Oakland to Markin, dated July 29, 1938.

(Said document, so offered and received in evidence, was marked Government's Exhibit 273.)

Mr. Hotchkiss: Oakland in this letter to Markin says:

"I have gone over the memorandum from Mr. Green to Mr. Samuels regarding the proposed organization of Yellow Cab Company of Chicago.

"I do not see any particular advantage in the Operating Company leasing the cabs instead of own-
669 ing them, as there could be a good deal of argument regarding the rate charged for rental.

"I would much prefer that the Operating Company be capitalized for a small amount, that is only sufficient to cover the present operating equipment, and they would then be unable to finance new cabs themselves and would have to borrow the money from the Parent Company. This could be done under a mortgage, and they then pay interest on the amount that is necessary to borrow. I do not see where any reasonable objection could be made for the borrowing of money and paying interest to purchase new equipment.

"In line with the above and with Mr. Greene's suggestion, I believe that Corporation A should be organized which would take over all of the real estate now owned by Yellow Cab Company. Corporation B should be organized (named Yellow Cab Company) and would take over all of the operating equipment. The present Yellow Cab Company would then be liquidated into Chicago Yellow Cab Company. The liquidation of
670 this subsidiary would be tax free. Under this plan, the Chicago Yellow Cab Company would have all of the cash which is now in Yellow Cab Company and would own the stock of A Corporation (the Realty Corporation) and the stock of B Corporation (Yellow Cab Company, the Operating Company)."

Mr. Lynton: In connection with the last exhibit, No. 273, the first line of your excerpt book uses the word "organization," and you so read it into the record.

I think the exhibit itself uses the word "reorganization."

May the record simply show that typographical correction?

Mr. Hotchkiss: Very well.

I offer Government's Exhibit 274, consisting of a letter from Markin to Samuels, President of Chicago Yellow, dated August 1, 1941.

(Said document, so offered and received in evidence, was marked Government's Exhibit 274.).

"In going over your June Statement I notice that the parent company, of which you are President,
671 shows an approximate loss of $450.

"I doubt if you could convince the stockholders that it is good management for a company with over a million dollars in cash, always on hand, to lose money.

"I therefore suggest that you examine Schedule A—Investments—in the balance sheet of your company and you will find there is very little outside investment and the only income your company is getting is from subsidiaries. At one time, as I recall, the Board of Directors approved the suggestion to invest $250,000 in outside securities.

"I wish you would give this matter a little thought and consult the Treasurer of your company, Mr. Bieze, with the idea of recommending to the Board, at the next meeting, the purchase of some good securities or any other good investments."

I offer Government's Exhibit 275, consisting of a letter dated October 15, 1941, from Wyatt, Treasurer of Parmelee, to Bieze, Treasurer of Yellow Cab.

(Said document, so offered and received in evi-
672 dence, was marked Government's Exhibit 275.)

Mr. Hotchkiss: This letter makes certain recommendations with respect to Benzoline and Utilities and a possible merger of the two.

I offer Government's Exhibit 276, consisting of a letter from Bieze of Yellow to Rank, President of Parmelee, dated December 14, 193.

673 (Said document, so offered and received in evidence, was marked Government's Exhibit 276.)

"I am attaching herewith copy of memo of matters to be taken up at the Yellow Cab Company board meeting next Thursday. Would you be good enough to substitute this sheet for the sheet that was given to you yesterday."

Next I offer Government's Exhibit 277, consisting of a letter from Bieze to Rank, dated December 14, 1939, in which Bieze makes suggestions to Rank as to the dividends which Yellow and the other subsidiaries of Chicago Yellow should pay to Chicago Yellow.

(Said document, so offered and received in evidence, was marked Government's Exhibit 277.)

Mr. Hotchkiss: I offer Government's Exhibit 278, being a letter from Bieze to Markin, dated December 19, 1945.

(Said document, so offered and received in evidence, was marked Government's Exhibit 278.)

Mr. Hotchkiss: Mr. Bieze advises Markin as to
674 certain matters which will be taken up at at the next board meeting, and then asks:

"If there are any other matters you wish to be taken up, will you be good enough to call us."

Government's Exhibit 279 is now offered in evidence. It consists of a letter from E. S. Higgins, Vice President of TMC, to Samuels of Yellow, dated June 28, 1930.

(Said document, so offered and received in evidence, was marked Government's Exhibit 279.)

Mr. Hotchkiss: (Reading)

"With reference to the request of Mr. Jaeckel for your stock ownership, etc. which was O. K., I want to thank you for bringing it to our attention before answering. In these times it is particularly necessary to be careful how information is given out and I am trying to get our friends to forward their requests through this office.

"I wish that you would pass a word of warning about among the Chicago officials to furnish information only when requested by us here. If requests are made, send us the answers and we will see that they are properly attended to."

Next, I offer Government's Exhibit 280, consisting of a carbon copy of a letter dated July 19, 1933, from T. V Hogan to Morris Markin.

(Said document, so offered and received in evidence, was marked Government's Exhibit 280.)

Mr. Hotchkiss: (Reading)

"As per our telephone conversation of today, I am submitting herewith the following statistics with reference to the new rates of fare."

And then, down at the bottom, is a hand-written notation:

"Thought you might want a copy of letter to the Boss."

I offer Government's Exhibit 281, being letter from Bieze to Oakland of CCM, dated January 16, 1941, sending copies of certain agreements which Utilities and Benzoline contemplate entering into.

(Said document, so offered and received in evidence, was marked Government's Exhibit 281.)

Mr. Hotchkiss: I offer Government's Exhibit 282, consisting of a letter from Oakland, Vice President of CCM, to Bieze, Vice President of Yellow, dated June 8, 1944.

(Said document, so offered and received in evidence, was marked Government's Exhibit 282.)

Mr. Hotchkiss: Mr. Oakland asks Bieze to send him a resume of the gasoline contract between Standard Oil and Utilities.

I offer Government's Exhibit 283, consisting of letter from Bieze to Oakland, dated June 21, 1944, and which is in response to the previous letter marked Government's Exhibit 282.

(Said document, so offered and received in evidence, was marked Government's Exhibit 283.)

Mr. Hotchkiss: I offer Government's Exhibit 284, consisting of a memorandum from Rank to Markin, dated April 25, 1940.

(Said document, so offered and received in evidence, was marked Government's Exhibit 284.)

677 Mr. Hotchkiss: Mr. Rank is calling to Mr. Markin's attention that Mr. Hogan is not following instructions with reference to providing certain statistics, and then says:

"In my opinion the notation will serve to minimize the value of this report and Mr. Hogan's name thereon will serve to lower the morale of the garage managers and undermine the very thing which we are trying to accomplish. (Handwritten notation) Have written to Hogan direct at MM's suggestion L. R. 4-25-40."

Mr. Lynton: I think you ought to read the whole thing.

Mr. Hotchkiss: (Reading)

"The weekly report of revenue of the Yellow Cab Company for the first time in a number of months bears the notation

"'The Above Figures are Some Statistics Taken From the Operation Sheet Week Ended April 20, 1940.

"Thos. B. Hogan.'

"This report is a regular weekly report compiled by the treasurer's office and is not as Mr. Hogan's comment indicates: an incidental memorandum of possible interest.

678 "This report has been regularly and consistently issued weekly for some time and reflects the work of the garage managers and is the basis of the competitive spirit which we have been trying to create among them.

"In my opinion the notation will serve to minimize the value of this report and Mr. Hogan's name there-

on will serve to lower the morale of the garage managers and undermine the very thing which we are trying to accomplish. (Handwritten notation) Have written to Hogan direct at MM's suggestion L. R. 4-25-40."

I offer Government's Exhibit 285, consisting of a letter from Rank to Hogan, President of Yellow, dated April 26, 1940.

(Said document, so offered and received in evidence, was marked Government's Exhibit 285.)

Mr. Hotchkiss: Mr. Rank refers to this note appearing on the statistics notation signed by Hogan. He says:

679 "I do not know the purpose of this notation but it seems to me that its addition to a regular report will be interpreted by the recipients as having some significance. In my opinion it serves to minimize the value of the report by indicating that it is a memorandum of possible interest whereas the report actually reflects the ability of the several garage managers and is the basis of the competitive spirit which we have been endeavoring to create among them.

"I wish you would give this matter some thought as I know that you have no desire to handicap our efforts to build an aggressive and sound organization in the operating department of the Yellow Cab Company."

I offer Government's Exhibit 286, consisting of letter from Rank to Bieze, dated March 11, 1941.

(Said document, so offered and received in evidence, was marked Government's Exhibit 286.)

Mr. Hotchkiss: This letter states:

680 "I am asking Mr. Stouffer to come to New York on or about April 2nd to check up on anything that may be new in the operating procedure in that city. I would thank you to provide Mr. Stouffer with the funds necessary for making this trip."

I offer Government's Exhibit 287, consisting of letter from Oakland of CCM to Bieze of Yellow, dated May 7, 1940.

(Said document, so offered and received in evidence, was marked Government's Exhibit 287.)

Mr. Hotchkiss: He says:

"* * * I am enclosing herewith form used by Checker Taxi Company for an analysis of their claim reserve. It is my suggestion that you follow this form and include it in your monthly statements beginning in April, 1940."

I offer Government's Exhibit 288, consisting of letter from Oakland to Bieze, dated June 6, 1940.

(Said document, so offered and received in evidence, was marked Government's Exhibit 288.)

Mr. Hotchkiss: He refers to a detailed analysis of the claim expense for the previous year. He says:

681 "I would appreciate it very much if you could arrange to send this to me in the near future, as I now have all the figures except yours."

I offer Government's Exhibit 289, being letter from Beize to Oakland, dated June 10, 1940.

(Said document, so offered and received in evidence, was marked Government's Exhibit 289.)

"As requested in your letter of June 6, 1940, we are attaching herewith two copies of detailed analysis of the Claim expense for the year ended April 30, 1939 and the year ended April 30, 1940."

I offer Government's Exhibit 290, letter from Markin to Samuels of Yellow, dated September 19, 1933.

(Said document, so offered and received in evidence, was marked Government's Exhibit 290.)

Mr. Hotchkiss: In this letter Markin recommends approval as to certain salary schedules for officers of Yellow.

682 I offer Government's Exhibit 291, consisting of letter from Rank to Hogan and Bieze of Yellow, dated August 24, 1939, in which Hogan authorizes a certain wage for the assistant superintendents.

(Said document, so offered and received in evidence, was marked Government's Exhibit 291.)

Mr. Lynton: Would you pause just a moment so that we can check the photostat of this?

Mr. Hotchkiss: Yes, sure.

Mr. Lynton: May I suggest you read the entire letter? Are we talking about the same thing?

Mr. Hotchkiss: 291.

Mr. Lynton: No, no.

The Court: The next one is 292.

Mr. Lynton: Yes.

Mr. Hotchkiss: I will read 291 and 292 in full so there will be no question about it.

Mr. Lynton: All right.

Mr. Hotchkiss: Government's Exhibit 291 is the letter from Rank to Hogan and Bieze of Yellow, dated August 24, 1939, and I will read it in full:

"I have authorized Mr. Stouffer to fix a minimum
683 wage for Assistant Superintendents of $30.00 per six-day week. It is not intended to make a blanket adjustment of the Assistant Superintendents' wages to this figure but rather to fix a minimum standard for men who qualify and show their ability to meet the increased responsibilities placed upon them in connection with the new washing and dispatching program."

Next, I offer Government's Exhibit 292, the letter from Rank to Hogan and Bieze, dated March 15, 1940.

(Said document, so offered and received in evidence, was marked Government's Exhibit 292.)

Mr. Hotchkiss: In this letter, Rank says:

"I regret to inform you that it is going to be necessary to dispense with the services of Mr. Prince as he has given no indication of having the ability to carry out the duties and responsibilities of night superintendent. In your absence I have authorized Mr. Stouffer to tell Mr. Prince that the company will allow him two weeks' pay, as has been usual in such cases.

684 "I have also authorized Mr. Stouffer, when and as he sees fit, to increase Mr. Coyle from $50 to $60 per week. Since Mr. Prince has been acting as night superintendent Mr. Coyle has taken over the duties of Employment Manager in addition to those of Traffic Manager and has done an excellent job to date."

This is on the letterhead of Levin Rank, 1775 Broadway New York.

Mr. Lyston: You inadvertently mentioned two weeks. It should have been two months. May the record show that?

Mr. Hotchkiss: Two months, all right.

I offer Government's Exhibit 293, letter from Bieze to Markin, dated November 19, 1945.

(Said document, so offered and received in evidence, was marked Government's Exhibit 293.)

Mr. Hotchkiss: In this letter Bieze sends a schedule of recommendations as to salaries for different categories of workers, and then it closes:

"If these recommended rates of compensation meet with your approval, may we have your approval on same."

685 I offer Government's Exhibit 294, consisting of a letter dated November 20, 1945, from Markin to Bieze.

(Said document, so offered and received in evidence, was marked Government's Exhibit 294.)

Mr. Hotchkiss: Markin says:

"I approve the proposed increases shown in your letter of November 19, 1945."

Mr. Lynton: As a matter of the record, will the government stipulate at this time that during the period of all of these letters Parmelee was a management consultant for Yellow and that these letters were in pursuance of its functions as management consultant?

Mr. Hotchkiss: It is not necessary for the government to stipulate that fact because that fact or substantially that fact is very thoroughly covered in the record which has been inroduced to date.

Mr. Lynton: I was just referring to the question of time. You say it is already covered and, therefore, you need not stipulate because it is already shown?

Mr. Hotchkiss: My understanding is it is already shown.

686 Mr. Lynton: All right. Of course, I assume your position is that the record already shows that Mr. Markin is an advisory consultant to Parmelee, and on that basis you won't stipulate that these letters last read, so far as they refer to him, are in pursuance of his capacity as such.

Mr. Hotchkiss: The government is perfectly willing to stand on the record which has been shown to date on the basis of the exhibits introduced.

I offer Government's Exhibit 295, consisting of a letter from Oakland to Bieze, dated November 27, 1941.

(Said document, so offered and received in evidence, was marked Government's Exhibit 295.)

Mr. Hotchkiss: There, again, reference is made to the matter of salaries and similar information regarding employees.

I offer Government's Exhibit 296, consisting of a letter from Oakland to Sokoll of Cab Sales, dated November 30, 1945.

(Said document, so offered and received in evidence, was marked Government's Exhibit 296.)

687 Mr. Hotchkiss: I now state there are certain handwritten notations on this letter, figures in the main which do not appear in this excerpted portion, and the letter states:

"Mr. Markin has authorized the following contributions for Yellow Cab Company."

and cites the various charitable donations which Yellow Cab has been authorized to make and which are called to the attention of Cab Sales.

Next, we come to a section dealing with the Yellow purchase of CCM cabs, and sub-heading under that, "Organization of Automotive Sales Corporation, Sale by It of CCM Cabs to Yellow, Dissolution of Automotive."

I offer Government's Exhibit 297, consisting of the minutes of the first directors meeting of Automotive Sales Corporation, dated April 23, 1929.

(Said document, so offered and received in evidence, was marked Government's Exhibit 297.)

Mr. Hotchkiss: The meeting was called to order, and then this resolution was adopted:

"Resolved that the form of sales contract to be en-
688 tered into by this Corporation and Checker Cab Manufacturing Corporation, presented to this meeting, and the terms and provisions contained therein, be and the same hereby is in all respects approved, * * *"

I read further:

"Mr. Earnest H. Miller then appeared before the meeting and stated that he was President of Parmelee Transportation Company, a Delaware corporation, and that he was authorized, on behalf of said Company, to offer to purchase from this Corporation 1,000 shares without par value of its capital stock for the sum of $1,000 in cash, said shares to include the shares originally subscribed for by the incorporators of this Corporation, * * *"

Then the resolution was passed, adopting that proposal.

689 The next is Government's Exhibit 298, consisting of an agreement between CCM and Automotive, dated April, 1929, an agreement under which Automotive agrees to use its best efforts to sell the products of Checker.

(Said document, so offered and received in evidence, was marked Government's Exhibit 298.)

Mr. Hotchkiss: Then the next page of the excerpted portion, 337:

"On all orders procured by or through Sales Corporation and accepted by Checker."—

That is Checker Cab Manufacturing Company.

"for taxicabs or other motor vehicles, Checker agrees to pay to Sales Corporation a commission equals to 5%

of the net selling price, such commission to be paid by Checker to Sales Corporation promptly upon the delivery of taxicabs or other motor vehicles to the purchaser."

Government's Exhibit 299 consists of a letter from Markin of Checker Cab Manufacturing Company to Automotive dated April 29, 1929.

690 (Said document, so offered and received in evidence, was marked Government's Exhibit 299.)

Mr. Hotchkiss: It states:

"We have today received an order from Yellow Cab Company of Chicago, Illinois, dated April 29, 1929, for 1,000 Model K, Checker cabs. This is to advise you that we acknowledge that you have obtained this order for us pursuant to the provisions of our agreement, dated April 29, 1929, and that you are accordingly entitled to the commission provided for in Paragraph III of said agreement."

Government's Exhibit 300 is a letter from A. G. Steckler of Transportation Management Corporation to Oakland of CCM, dated August 2, 1930.

(Said document, so offered and received in evidence, was marked Government's Exhibit 300.)

Mr. Hotchkiss: It states:

"The Automotive Sales Corporation has not received their commissions for 122 cabs sold to Yellow Cab Company, Chicago, 100 cabs to Yellow Cab Company,

691 Pittsburgh and 50 cabs to Pittsburgh Transportation Company."

Government's Exhibit 301 is a letter from Preston of Transportation Management Corporation to Automotive, dated September 26, 1930.

(Said document, so offered and received in evidence, was marked Government's Exhibit 301.)

Mr. Hotchkiss: This certifies that the earned surplus on the books of the company as of August 31, 1930, amounts to $271,000, round figures, and it is available for the payment of dividends.

Government's Exhibit 302, consists of the minutes of directors' meeting of Automotive, dated September 29, 1930.

(Said document, so offered and received in evidence, was marked Government's Exhibit 302.)

Mr. Hotchkiss: The directors at that meeting declared a dividend of $271 per share.

Next, Government's Exhibit 303 consists of the minutes

of directors' meeting of Automotive, dated December 29, 1930.

(Said document, so offered and received in evi-
692 dence was marked Government's Exhibit 303.)

Mr. Hotchkiss: Again the directors declared dividend of $47 per share.

Government's Exhibit 304 consists of the minutes of directors' meeting of Automotive, dated March 30, 1931.

(Said document, so offered and received in evidence, was marked Government's Exhibit 304.)

Mr. Hotchkiss: Again a dividend is declared, this time of $10 per share.

Government's Exhibit 305 consists of the minutes of directors' meeting of Automotive, dated December 21, 1931.

(Said document, so offered and received in evidence, was marked Government's Exhibit 305.)

Mr. Hotchkiss: Again a dividend is declared, this time of $8 per share.

Government's Exhibit 306, consists of the minutes of directors' meeting of Automotive dated, dated November 28, 1932, at which the directors approve the dissolution of the corporation.

(Said document, so offered and received in evi-
693 dence, was marked Government's Exhibit 306.)

Mr. Hotchkiss: At the bottom of page 340 of the excerpted portion, I read:

"The subscriber, Parmelee Transportation Company, a Delaware corporation, the holder of all the capital stock of Automotive Sales Corporation, . . . does hereby consent in writing to the dissolution of said Automotive Sales Corporation, . . ."

Mr. Lynton: May it be noted at this point that of the two standing general objections of the defendants, one is now removed.

The standing objection which is removed is as to relevancy and materiality.

The standing objection which remains is that the ensuing documents, until otherwise noted, are objected to by those defendants who did not prepare them on the ground that they are not binding on those defendants.

Mr. Hotchkiss: Government's Exhibit 307 consists of the minutes of directors' meeting of Yellow, dated May 21, 1931.

First, the Government is offering this and the other documents against all of the defendants.

694 (Said document, so offered and received in evidence, was marked Government's Exhibit 307.)

Mr. HOTCHKISS: And I read starting with "Mr. MILLER":

"Mr. MILLER stated that he had negotiated with CHECKER CAB MANUFACTURING CORPORATION for the purchase by this corporation of 1,000 Model M. Checker Cabs. . . .

"We hereby place an order with you for one thousand (1,000) Model M. Checker Cabs on the following terms:"

Which are there set out.

Mr. LYSTON: Will you read the last sentence on page 341?

Mr. HOTCHKISS: (Reading):

"In the event of a dispute as to whether or not there has been a failure to deliver said Model M Cabs in accordance with the terms and conditions in this order, you hereby agree that E. H. MILLER, President of the Transportation Management Corporation, shall be the sole arbiter of such dispute, and his judgment shall
695 be final and binding upon the parties hereto."

And the Board of Yellow approves the purchase of cabs in accordance with and or the terms set forth in the order.

The next is Government's Exhibit 308, consisting of the minutes of the Executive Committee of CCM, dated April 18, 1935.

(Said document, so offered and received in evidence, was marked Government's Exhibit 308.)

Mr. HOTCHKISS: Present at the meeting were Manning, Beal and Markin. Markin Chairman. He stated that he has negotiated a contract to build for the Chicago Yellow Cab Company a thousand 6 cylinder cabs at a price of $1,350 each, f. o. b. Kalamazoo, Michigan, and CCM approves this sale.

Government's Exhibit 309, dated August 21, 1935, a letter from Rank to Samuels of Yellow.

(Said document, so offered and received in evidence, was marked Government's Exhibit 309.)

Mr. HOTCHKISS: And it reads:

"In talking over unfinished business with Morris this morning mention was made of the possibility of
696 Yellow Cab ordering 500 additional Model Y cabs at or about the price of the 1,000 now on order.

"I do not know how much discussion has been had between Morris, Tom and yourself on this subject, or

whether the matter has been lost sight of in the general upset of the last few weeks. I would, however, like to sit down with Tom and you some day toward the end of next week and determine whether or not it is desirable to make any recommendations to the Board of Directors in this connection."

Government's Exhibit 310 is a letter from Samuels to Rank, dated August 22, 1935, and acknowledges receipt of the foregoing letter.

(Said document, so offered and received in evidence, was marked Government's Exhibit 310.)

By Mr. Hotchkiss: And it states:

"We shall discuss this matter of the additional cabs at once so that we may be in a position to fully take it up with you upon your next visit, so that the matter may be thrashed out at the next regular meeting of the Board."

697 The next is Government's Exhibit 311, consisting of a letter from Hogan, President of Yellow, to Rank, dated September 3, 1935, with an attachment consisting of a letter dated September 3, 1935, from Hogan, President of Yellow, to CCM, attention: Oakland.

(Said document, so offered and received in evidence, was marked Government's Exhibit 311.)

Mr. Hotchkiss: The letter from T. A. Hogan to Rank says:

"I am attaching herewith copy of letter sent today to Checker Cab Manufacturing Corporation."

Then reading from the attached letter, it says:

"We desire to call your attention to the fact that under the terms of our contract, *in re* the purchase of 1000 cabs, we should have had delivered to us prior to date a minimum of 250 cabs, as our contract called for that delivery prior to the end of August.

"In our conversations with you, you informed us
698 that it would be impossible to deliver 250 cabs to us prior to August 31st, but assured us that this would be made up within the first ten days of September, so that prior to September 10th, we would have delivery of 333 cabs.

"We have just heard, and it is rumored about the street generally, that your company is about to deliver 100 taxicabs to Checker Taxi Co. of Chicago which, you know, of course, is our main competitor here, these taxicabs being approximately of the same specifications

as our own. It must be apparent to you, as well as it is to us, that these 100 taxicabs are being delivered to our competitor at the same time that you are violating your contract with us and that these 100 taxicabs should be delivered to us in order to fulfill your obligation under our contract. Needless to say, we cannot sit by and allow this serious breach of contract, which you can well understand must necessarily result in serious damage to us. We expect you to fulfill your promise to the letter, just as you expect us to fulfill our promise to the letter and, consequently, we are at this early date serving you with notice that in view of your breach during the month of August, we insist that our quota of cabs, as per your promise, be delivered to us prior to September 10th, namely 333 cabs, and that the balance be delivered to us promptly, in accordance with our agreement. Under no circumstances can we countenance delivering cabs to our competitor, which rightfully belong to us.

"In this connection, we wish to call your attention to the fact that practically every cab delivered to us up to date has necessitated a considerable amount of labor in checking up negligence in your assembly. It would have been absolutely dangerous to allow these cabs upon the street in the condition in which they were received. Our Mr. Stouffer called your attention to this immediately and, of course, the only thing that could be done by us, under the circumstances, was to employ considerable labor to check up on the mistakes that were made in the assembly in your factory, and considerable overtime labor had to be employed in order to get the cabs onto the street. Naturally, you cannot expect us to shoulder this bill and we expect you to reimburse us for all of this unnecessary expense, due solely to the negligence in the matter of assembly at your plant. We hope in the future the assembly will be much more efficient, so as to make it unnecessary for us to go to this large expense in checking the cars after their delivery to us.

"You are hereby notified that if any more cabs are tendered for acceptance which do not comply with the contract, we shall not accept same and if the cabs are not delivered to us on September 10th and in the future as provided for in the contract, we shall consider such failures on your part as breach of the contract and will consider the contract completely terminated.

"The cabs we accepted to date which were not in
701 compliance with the contract and which we only accepted at your request has caused us an outlay of approximately $1,082.40 to put the cabs in running order. We shall hold out of the final payment this amount of money; but the fact we have accepted these unfinished cabs is not to be taken by you as any waiver on our part of the strict terms of the contract in the future, but from now on we shall expect all cabs tendered us to comply 100% with the contract and specifications."

Government's Exhibit 312 is a letter from Hogan of Yellow to Rank with an attachment consisting of a letter dated September 4th, 1935, from Hogan to CCM, attention Oakland.

(Said document, so offered and received in evidence, was marked Government's Exhibit 312.)

Mr. HOTCHKISS: And it is along the same lines as the preceding letter.

Government's Exhibit No. 313, consists of a letter from Bieze of Yellow to Rank, dated September 10, 1935, with attachment consisting of letter dated September 6, 1935, from Oakland of CCM to Hogan of Yellow.

702 (Said document, so offered and received in evidence, was marked Government's Exhibit 313.)

Mr. HOTCHKISS? It is along the same line as the previous two exhibits.

The next is—

Mr. LYNTON: Before you pass to the next, will you read the last paragraph of No. 313?

Mr. HOTCHKISS: Yes.

"You have advised us that it has been necessary for you to make unusual expenditures due to the fact that some of the cabs which you have received were not up to specifications. We have already given you a guarantee that we will make good any defects of material or workmanship and we shall be glad to accept any reasonable charges for any instances where there has been or will be any defective material or workmanship on cabs delivered to you."

The next is Government's Exhibit 314, consisting of a letter from Stouffer, Vice-President of Yellow, to Tuttle of Checker Cab Manufacturing.

(Said document, so offered and received in evi-
703 dence, was marked Government's Exhibit 314.)

Mr. Hotchkiss: It says:

"I am submitting herewith, a complete summary of the troubles we have encountered with the Model Y Cabs to date. Some of these items are of the utmost importance while others are being furnished to you as a matter of record."

And then is listed 237 items of trouble.

Government's Exhibit 315 consists of a letter dated November 27, 1935, from Bieze of Yellow to Rank; with attachment consisting of a letter dated November 25, 1935, from Oakland of CCM to Yellow.

(Said document, so offered and received in evidence, was marked Government's Exhibit 315.)

Mr. Hotchkiss: It says:

"I am attaching herewith copy of letter which I thought you might be interested in seeing."

Then the attached letter:

"Upon checking our records we find that you have not as yet paid us for the last nine cabs on which
704 there is a balance due of $11,761.38.

"We also know that you have claims against us for defective material and workmanship which you have previously advised us about.

"We would appreciate it very much if you would take care of this balance owing us, and wish to assure you that if you do it will in no way prejudice your claim against us."

The next is Government's Exhibit 316, consisting of a letter dated December 2, 1935, from Rank of Parmelee to Bieze of Yellow.

(Said document, so offered and received in evidence, was marked Government's Exhibit 316.)

Mr. Hotchkiss: It says:

"This will acknowledge receipt of your letter of November 27th, together with enclosure, being copy of letter addressed to you under date of November 25th by Mr. R. E. Oakland, Vice-President and Treasurer of Checker Cab Manufacturing Corporation.

705 "In this connection, I am of the opinion that it is entirely unnecessary to hold up the payment for the last new cabs delivered to you on account of your claim against the manufacturer. I feel quite confident that you will have no difficulty whatever in working out a

satisfactory adjustment and an immediate settlement."
ment."

Government's Exhibit 317 consists of a letter dated December 26, 1935, from Rank of Parmelee to Oakland of CCM, in which is discussed these claims made by Yellow.

(Said document, so offered and received in evidence, was marked Government's Exhibit 317.)

Mr. Lynton: Will you read the last sentence of the second paragraph, please?

Mr. Hotchkiss: I will read the whole thing:

"In conversation with Messrs. Hogan, Bieze and Stauffer last week the matter of their claim against the factory for defective workmanship was under discussion.

"As I understand it, Stauffer claims to have spent 5,431 hours on general tightening, cutting sills for brake clearance, and installing new hose connections;
706 225 hours on repairs to gas tanks; 125 hours on window regulators and refinishing chrome work, the last two operations not yet having been completed. This makes a total of 5,781 hours which, figured at 60 cents per hour, would amount to $3,468.60.

"Will you kindly let me know how you feel about this claim and what work, if any, you wish me to do or have done in connection therewith."

Government's Exhibit 318, memorandum from Oakland to Rank, dated December 30, 1935.

(Said document, so offered and received in evidence, was marked Government's Exhibit 318.)

Mr. Hotchkiss: It says:

"I have your letter of 12-26-35"—

Which is the preceding exhibit.

"regarding the estimate of the amount already expended by Chicago Yellow Cab Company, which they claim should be charged back to us as warranty expense.

"We, of course, are agreeable to paying all of their expenses for cutting the sills, installing new hose con-
707 nections; repairing of gas tanks; repairing of window regulators and refinishing the chrome work, but we do not believe we should be charged with the general tightening and this is the major portion of the hours charged against us.

"When a cab is purchased it is a known fact to both manufacturer and operator that if the cabs are to be maintained properly it is necessary to have all the nuts

and bolts tightened not once but several times until the cab is properly broken in.

"None of the operators to whom we have ever sold cabs and this includes Chicago Yellow Cab Company have heretofore made any charge against us for tightening and we do not see why they should now attempt to change this policy.

"While it is true that some of the first cabs which were shipped to Yellow Cab were not as tight as they might have been, nevertheless, if they were going to properly maintain their cabs they should have a gen-
708 eral tightening as soon as the cabs are received and I am sure that you will agree with me that it doesn't cost any more to tighten the nuts up two turns instead of one turn.

"For your further information, I wish to advise you that Checker Taxi Company of Chicago, have not made any claim to us for warranty expense, with the exception of replacing defective material and I believe you realize that this organization would be the first to make a claim if they thought there was any reason for it.

"We would appreciate it if you would have another conference with the officers of Yellow Cab Company and see if it is not possible to make a reasonable adjustment of their claim against us."

The next is Government's Exhibit 319, dated December 13, 1935, a letter from Samuels of Yellow to CCM, and in general deals with this question of defective work on the cabs.

(Said document, so offered and received in evidence, was marked Government's Exhibit 319.)

Mr. Hotchkiss: And it says:

709 "Your reply, covering the question of increased cost on certain parts and the items contained in your letter showing these increases, has been definitely considered by us and while we cannot, at this time, come to any definite conclusion as to the matter of entering into a contract for delivery of cabs next year, we have definitely decided that one thing will have to be incorporated in the contract, if one is made, and that is a definite covenant on the part of the factory that if we do purchase 500 taxicabs, to be delivered in 1936, the factory will have to agree, in the contract, not to sell any new taxicabs to any other person, firm, or corporation in Chicago or its suburbs during the year 1936. We

will have to insist on this protection to ourselves, in view of the fact as to what happened during 1935, and I believe you will agree with us that, under all the circumstances of the case, which we have fully explained to your representatives heretofore, this protection to us is something which we have a perfect right to ask for and insist upon.

"We feel certain that, if this feature can be embodied in our agreements, in view of the discussions
710 which we have had orally as to the question of increased cost of various parts entering into the automobile and the necessity of protecting ourselves against still further increased costs will probably result in a definite contract being drawn without any further delay.

"We would therefore suggest that you let us know, at your earliest convenience, how you feel about the proposition herein suggested."

The next is Government's Exhibit 320, a letter from Oakland of CCM to Yellow, dated December 16, 1935, referring to the foregoing letter.

(Said document, so offered and received in evidence, was marked Government's Exhibit 320.)

Mr. HOTCHKISS: And it says:

"This must be taken up with Mr. Markin."

The next is Government's Exhibit 321, which is a letter from Samuels of Yellow to CCM, dated December 23, 1935.

(Said document, so offered and received in evidence, was marked Government's Exhibit 321.)

Mr. HOTCHKISS: It says:

711 "In accordance with your last letter, we have had several conversations with Mr. Markin in Chicago and I believe that he is convinced that the proposition of incorporating a clause to the effect of no sales to any other person, firm or corporation in Chicago, during 1936, is perfectly reasonable and he sees no objection to incorporating such a clause.

"He suggested, however, that if a contract is to be made, he would like to have the same prepared by the attorney for the factory, Mr. Fuller. This will be perfectly agreeable to us, as we ourselves would like to see just what this contract will contain and, if you will kindly get in touch with your attorney and draft up a preliminary agreement and submit to us, * * *"

The next is Government's Exhibit 322, consisting of a letter agreement between Yellow and CCM, dated January 17, 1936.

(Said document, so offered and received in evidence, was marked Government's Exhibit 322.)

Mr. Hotchkiss: It reads:

712 "In confirmation of the various negotiations heretofore conducted between us relative to the purchase of new taxicabs, the following shall evidence the agreement reached between us:

"We agree to purchase from you, and you agree to sell to us, five hundred (500) new Model Y Checker taxicabs, without tires, at the price fo $1,500 each f. o. b. Kalamazoo, * * *"

And I drop down to the last paragraph:

"This purchase of taxicabs is conditioned upon your agreement, which you hereby make, that prior to February 15, 1937 you will not sell or permit the sale of any taxicabs in the City of Chicago, or its immediate environs, to any person, firm or corporation that competes directly or indirectly with the undersigned without our written consent first had and obtained."

The Court: The Court will recess now until two o'clock.

(Thereupon a recess was taken to 2:00 p. m. the same day, May 21, 1948.)

713 No. 46 C 1339

UNITED STATES OF AMERICA, PLAINTIFF,

vs.

YELLOW CAB COMPANY, *et al.*, DEFENDANTS.

Before Judge LaBuy

Friday, May 21, 1948, 2 o'clock p. m.

Court met pursuant to recess.

Present:

Mr. Hotchkiss
Mr. Williams
Mr. Lynton
Mr. Ginsberg
Mr. Fuller
Mr. Climenko

Mr. Hotchkiss: I now offer Government's Exhibit 323, consisting of a letter agreement between Yellow and Checker Cab Manufacturing Company, dated October 21, 1936.

(Said document, so offered and received in evidence, was marked Government's Exhibit 323.)

Mr. Hotchkiss: (Reading)

"In connection with the negotiations heretofore
714 conducted with your company, in reference to purchase of additional taxicabs, we herewith submit to you the terms and conditions thereof as we understand them:

"We agree to purchase from you, and you agree to sell to us, one hundred twenty-five (125) new Model Y Checker taxicabs, without tires, at the price of Fifteen Hundred ($1500.00) Dollars each, * * *"

The last paragraph on page 350:

"This purchase of taxicabs is, however, conditioned upon your express agreement, which you hereby make, not to sell or deliver to any person, firm or corporation, to be operated in Chicago or its suburbs, any taxicabs of your manufacture of a later or improved model than the Model Y taxicabs herein purchased, prior to October 15, 1937, without the written consent of the undersigned first had and obtained."

Mr. Lynton: Of the omitted portion of Exhibit 323, I should like to read this paragraph:

"These taxicabs are to be in all respects according to the specifications heretofore agreed upon between your company and ourselves at the time of purchase of the Model Y taxicabs which we have heretofore received."

Mr. Hotchkiss: I next offer Government's Exhibit 324, consisting of letter from Oakland of CCM to Markin,
715 dated August 16, 1937.

(Said document, so offered and received in evidence, was marked Government's Exhibit 324.)

Mr. Hotchkiss: (Reading)

"As per your request I am giving you herewith the sales which we have made to Yellow Cab Company of Chicago.

"From May to November, 1929, we delivered 1035 Model K taxicabs at a price of $1,906 . . .

"From February to November, 1930, 1165 Model K taxicabs were delivered at a price of $1906 . . .

"During November and December, 1931, 1000 Model M taxicabs were delivered at the price of $1,906 plus 50¢ for the installation of meter, or a total of $1,906.50. 1,000 Model K taxicabs were taken in in trade, on which

we made an allowance of $620,878.81, so that the net cash price was $1,285.62 each.

"From August to November, 1935, we delivered 1,000 Model Y taxicabs at a price of $1,394.00, excise tax $41.82, driveaway to Gary, Indiana, $6.00, total $1,441.82.

"From May to November, 1936, we delivered 620
716 Model Y taxicabs at a price of $1,500 plus $45.00 for excise tax, plus $6.00 for drive-away to Gary, Indiana, making a total price of $1,551.00 each.

"In March, 1937, 30 Model Y taxicabs were delivered for the above price of $1,551.00 each."

I offer Government's Exhibit 325, consisting of a letter of inquiry from Frank Magann of Cambridge Taxi Company, Cambridge, Massachusetts, on their letterhead, to Hogan of Yellow, which needs to be considered in connection with the next exhibit, being Government's Exhibit 326, which is a letter from Hogan of Yellow to Magann.

Mr. LYNTON: Will you stipulate that neither Cambridge Taxi Company nor Mr. Magann has any connection with any of the defendants in this case and did not have any such connection at the date of the letter under consideration?

Mr. HOTCHKISS: The term "connection" is a little broad. I would suggest that the stipulation be restricted to the fact that Mr. Magann is not an officer of any of the defendant companies.

Mr. LYNTON: Shall we phrase it this way: That Mr. Magann is not an officer or director of any of the de-
717 fendant companies and did not at that time and never has received any compensation from the defendant corporations and is not an employee of the defendant Markin, and that Cambridge Taxi Company has no stock ownership relationship to any of the defendant corporations and is not under any contract or management or the like with any of the defendant corporations?

Mr. HOTCHKISS: Yes, I will so stipulate.

Mr. LYNTON: I object to the admission of this proposed exhibit on the ground that it is incompetent and irrelevant, as well as on the standing objection which we have.

(Said document, so offered and received in evidence, was marked Government's Exhibit 325.)

Mr. HOTCHKISS: The letter reads:

"I have been going through a strike with the CIO. About fifty per cent of my equipment was on the road at all times and I think I got it beat although we are still before the Arbitration Board of Massachusetts.

"Our drivers have formed and are trying to put over a driver's union, and if so, I think that will be the solution of my trouble.

718 "The population of my city is 138,000 people, and I have been operating on a rate of 40 cents for the first mile and 5 cents for a fifth of a mile thereafter which in my estimation is too high. I would like your ideas on what you think would be a rate where I could keep these cabs busier than they have been. Please quote me your rate. Also what do you think of a 35 cent flag throw for the first mile and a half, and then 5 cents a third thereafter.

"Any ideas you can give me on this, I shall appreciate very much. Hoping this finds you and the family well, I remain, * * *"

I offer Government's Exhibit 326, being Hogan's answer to Magann, under date of June 13, 1939.

Mr. Lyxton: I object to that as incompetent and irrelevant and immaterial and observe in connection with the objection on the basis of incompetency that this is a personal letter and not a letter written in the capacity as officer of Yellow.

The Court: It is received subject to being connected up.

719 (Said document, so offered and received in evidence, was marked Government's Exhibit 326.)

Mr. Hotchkiss: (Reading)

"Yours received. I am sorry to learn that you have had labor trouble.

"You are sure handing me a hard one to answer. Everyone knows though that the low rates bring a larger volume of business. It is just a question of accidents. Accident experience runs up with the mileage. If I was to put in low rates, I would try and get my outfit 'judgment proof' as you are able to settle your claims much easier.

"35 cents for the first mile and a half and 5 cents a third thereafter, would do the business. Your guess probably would be just as good and maybe better than mine. Our rate is 20 cents for the first one-third and 10 cents for each two-thirds thereafter and $2.00 an hour for waiting time. This is a good rate to make money on if there is any business at all. Of course, with the comparison of rates in other cities, it is high.

720 "The best thing I know of if you can get away with it, is to buy light cars and rent them out to the drivers at $2.25 and $2.50 a shift and let them pay for the gas and run for 5 cents a half mile. I know an outfit in one of the Chicago suburbs who have 25 cars running this way and made $600.00 in a month. They have 2 competitors that have 35 or 40 cars each and they are doing well on the same basis. The town is about 150,000 inhabitants. They all have themselves 'judgment proof' and don't have to worry about accidents. They complied with the law by insuring with a phony insurance company. From what I can learn of cut-rate cab companies, they are having their own troubles on account of high wages. We are making a little money as we have run our cars four years.

"The price of light cars now are down to as low as $564.00. I know of one man that bought 30 new cars. You probably saw in the paper where Los Angeles bought 480 Buicks. They told me that with their
721 trade-in allowance on the De Sotos which they were running, the cars stand them $715.00 at Flint with the tires. They told me this in confidence and I would not want it broadcast that I was the one that gave out the news."

The next is Government's Exhibit 327, Minutes of Directors Meeting of Yellow, dated July 1, 1939.

(Said document, so offered and received in evidence, was marked Government's Exhibit 327.)

Mr. HOTCHKISS: The following directors were present: Hogan, Bieze, Houston, Rank, Laird.

Samuels and King of Checker-Yellow were also present.

"Upon motion duly made, seconded and unanimously carried, it was

"RESOLVED that the officers of this company are hereby authorized to purchase not to exceed 1,250 taxicabs at a price not to exceed $1,325 each, f. o. b. factory."

The next is Government's Exhibit 328.

Mr. LYNTON: You omitted a portion of the last exhibit. May I read this.

Mr. HOTCHKISS: Yes.

722 Mr. LYNTON: (Reading)

"The directors thereupon discussed the necessity of the purchase of new equipment, and the officers stated that in their judgment such new equipment would be required about the end of this year."

Mr. Hotchkiss: The next, Government's Exhibit 328, consists of Minutes of Directors Meeting of Parmelee, held October 3, 1939.

(Said document, so offered and received in evidence, was marked Government's Exhibit 328.)

Mr. Hotchkiss: There were present Rank, Houston, Laird Wyatt and Doherty. Rank, President of the corporation, called the meeting to order, and the meeting approved the purchase of 2,000 taxicabs by National Transportation Company, of 100 to 125 taxicabs by Yellow Taxi Company of Minneapolis, of 125 taxicabs by Yellow Cab Company of Pittsburgh, and of 125 taxicabs by Pittsburgh Transportation Company, all said companies being subsidiaries of this corporation, at a price of approximately $1,345 per cab.

It is further resolved that the corporation,
723 as management adviser of Yellow Cab Company of Chicago, approves the purchase by said Yellow Cab Company of 1,200 new Checker taxicabs from Checker.

The next is Government's Exhibit 329. I call your attention to the fact that in the excerpted portion, there is a typographical error in the first line. The date, October 19, 1929 should read 1939. Minutes of Directors Meeting of Yellow.

(Said document, so offered and received in evidence, was marked Government's Exhibit 329.)

Mr. Hotchkiss: There were present: Hogan, Houston, Laird, Rank and Bieze.

There were also present: Samuels and James T. Igoe and Raymond J. Wyatt.

They discussed this proposal of buying 1,200 cabs from Checker Cab. It is on page 354. Then reading:

"A discussion ensued in reference to the advisability of obtaining a lighter cab which would cost less than the type of cab now being used by this company. It
724 was pointed out that the last 1,650 cabs purchased by this company and delivered during the years 1935 and 1936 have been run approximately 100,000 miles per cab and will continue to be run for a considerably longer period. The directors agreed that a lighter cab would not stand use for the length of time or the number of miles which this company is now using its cabs; upon comparison of the probable length of life of a cheaper cab and the length of life of the present type of cab, it was the consensus of opinion of the directors of this company and of Chicago Yellow Cab

Company, Inc., that it is more economical for this company to continue to purchase the heavier type of cabs which it is now using."

Then it was resolved to purchase 1,200 cabs from CCM at $1,345.

Mr. Lynton: At this point, may I read a portion of the omitted portion?

Mr. Hotchkiss: Certainly.

Mr. Lynton: (Reading)

"It was stated that the contract provides for a
725 firm price of $1,345.00 for an undetermined number of such cabs subject to negotiations, but that the remaining cabs are subject to increased cost not to exceed $150.00 per cab due to the possibility of increased cost of labor and material to the manufacturer, and that if such increased cost to the manufacturer amounts to more than $150.00 per cab on the remaining cabs not sold at said price of $1,345.00, this company shall have the option to cancel the orders for deliveries affected by such increase in excess of $150.00 per cab; it was further stated that if the manufacturer sells to any other person or corporation similar taxicabs during the period of this contract at a price less than the price then currently made to this company according to the terms of the contract, this company shall obtain its cabs at the same price so made to such other person or corporation."

Mr. Hotchkiss: The next is Government's Exhibit 330, agreement between Yellow and CCM, dated October 20, 1939, under which Yellow agrees to purchase from Checker, and Checker agrees to sell and deliver to Yellow, 1,200 Checker taxicabs.

(Said document, so offered and received in evidence, was marked Government's Exhibit 330.)

726 Mr. Hotchkiss: I believe you must have quoted from that exhibit.

Mr. Lynton: No. I now have a quotation from this exhibit, 330.

Mr. Hotchkiss: All right.

Mr. Lynton: (Reading)

"In the event that, during the period in which this contract shall be operative and before its expiration or cancellation as herein provided, Checker shall publish a price for, or shall contract with any person or corporation to sell such person or corporation, taxicabs

substantially similar to taxicabs to be delivered hereunder, the price being less than the price then currently made to Yellow according to the terms hereof, Yellow shall obtain and be granted the same price so made to such other person or corporation.

"Yellow shall have the right through the regularly appointed or retained certified public accountant for Yellow to satisfy itself as to the propriety of such additional charges for direct labor and materials
727 should such additional charges be at any time made by Checker to Yellow under this agreement.

"SECOND: Yellow agrees to pay to Checker within five days after the signing of this agreement an amount in cash equal to One Hundred Thirty-four Dollars and Fifty Cents ($134.50) per taxicab for each of the one thousand two hundred (1,200) taxicabs to be purchased as herein provided, a total of One Hundred Sixty-one Thousand four Hundred dollars ($161,400).

"THIRD: The taxicabs to be delivered hereunder shall conform in appearance to the artist's drawings submitted by Checker to Yellow and made a part hereof, and shall also conform to the specifications hereto attached and made a part hereof. Changes in specifications may be made only in writing by mutual agreement of the parties hereto."

Mr. HOTCHKISS: The next is Government's Exhibit 331, which must be coupled with the next exhibit. It is an answer to the first one.

Mr. LYSTON: I should like to offer, with respect to these two proposed exhibits, the objections that
728 they are irrelevant and immaterial, also they are incompetent, the first one being written by someone not connected with any of the defendants.

Mr. HOTCHKISS: Government's Exhibit 331 is a letter from Adams Oil Company to Yellow, dated June 12, 1941.

(Said document, so offered and received in evidence, was marked Government's Exhibit 331.)

Mr. HOTCHKISS: (Reading):

"Please advise how the writer can secure a Yellow Cab franchise for Valley Mills, Texas."

The reply to it is Government's Exhibit 332, dated June 14, 1941: This is a letter from Samuels of Yellow to Adams Oil Company.

(Said document, so offered and received in evidence, was marked Government's Exhibit 332.)

Mr. Hotchkiss: In this letter, Mr. Samuels states:

"If there is no one operating with what is known as the standard Yellow Cab, I would suggest that you contact the sales department of Checker Cab Manu-
729 facturing Corporation at Kalamazoo, Michigan, attention Mr. R. E. Oakland, because they furnish us with all of our standard cabs and can advise you how to proceed to obtain the exclusive right to operate in your city."

The next is Government's Exhibit 333, dated August 20, 1945, consisting of letter from Oakland to Bieze.

(Said document, so offered and received in evidence, was marked Government's Exhibit 333.)

Mr. Hotchkiss: It reads:

"Returned herewith please find a copy of your order, which has been accepted."

And it refers to the next exhibit, which is Government's Exhibit 334, dated August 15, 1945, being a letter agreement between Yellow and Checker.

(Said document, so offered and received in evidence, was marked Government's Exhibit 334.)

Mr. Hotchkiss: It reads:

"We herewith offer to purchase from your Company, for replacement purposes, 1,595 purpose-built
730 Checker taxicabs, to be delivered to this Company as soon as possible."

Then I skip—

Mr. Lynton: Will you read the next sentence?

Mr. Hotchkiss: Yes.

"It is understood that these taxicabs are to be constructed according to the specifications discussed with you at the factory and in accordance with the drawings and designs exhibited to us at the factory.

"It is further understood that this order covers the above mentioned taxicabs when, as, and if manufactured by your Company and accepted by our Company. The price and terms of payment for such taxicabs shall be the ceiling price and terms as fixed by such agency of the United States Government as shall have jurisdiction over the matter of fixing ceiling prices upon automobiles and taxicabs, but shall be subject in all events to acceptance thereof by our Company."

The next is Government's Exhibit 335, consisting of the minutes of directors meeting of Checker Cab Manufacturing dated September 17, 1945.

731 (Said document, so offered and received in evidence, was marked Government's Exhibit 335.)

Mr. Hotchkiss: Present at the meeting were Markin, Oakland, King and Snow. Mr. Markin, President of the corporation, acted as Chairman. I read:

"1. The Chairman stated that this corporation had been engaged exclusively in war work since the start of the war and that all contracts had been cancelled on or about August 16, 1945. He further stated that he had had consultations with the War Production Board relative to the manufacture of a new taxicab and that as a result of these conferences this company had been authorized to manufacture and sell 2,000 taxicabs in the year 1945, and 2,200 taxicabs in the three months ending March 31, 1946. He further stated that because of changed conditions it was his opinion that the operating companies needed a much lighter taxicab than had formerly been built by this corporation, making it necessary to design an entirely new taxicab. He stated that when this corporation
732 had obtained permission from the War Production Board to manufacture a new taxicab that he had a new taxicab designed incorporating the features which he felt were needed and desirable under present operating conditions, and that he had placed tentative orders with the manufacturers of all major units for materials to produce 4,200 taxicabs. These orders were placed with the various manufacturers so they in turn could commit themselves to their suppliers for the materials required to produce these units. Mr. Markin also stated that the taxicabs in the fleet of all the customers of this company were in such condition that it was desirable to replace them at the earlier possible moment, and that while no orders had as yet been solicited from these customers he had every reason to believe that a substantial number of orders for taxicabs would be received after a sample model had been built and shown and a price established for it.

"Mr. Markin asked the Board of Directors to ap-
733 prove his actions as stated above, and also asked authority to spend such sums of money as would be necessary to build a sample cab, and also to place orders for the tools of this taxicab up to a maximum sum of $500,000.00."

Thereupon the Board of Directors passed resolutions approving this recommendation.

At this time, Mr. Williams will proceed with the presentation of the exhibits.

Mr. LYNTON: Before Mr. Williams starts, referring to the next proposed exhibits, may I, as a matter of record, record that my standing objection as to relevancy and materiality is now reinstated, so that in addition to the objection as to competency, we have that objection applying until next noted in the record?

The COURT: The record may so indicate.

Mr. WILLIAMS: I offer as Government's Exhibit 336 a letter from Rank to Oakland of CCM dated August 26, 1936.

(Said document, so offered and received in evidence, was marked Government's Exhibit 336.)

Mr. WILLIAMS: Which states that he is enclosing two copies of comparative statistics covering the
734 Chicago operations for the month of July, 1936. That appears on page 358 of the excerpts.

I offer as Government's Exhibit 337 a letter from Oakland to Sokoll, dated January 25, 1937.

(Said document, so offered and received in evidence, was marked Government's Exhibit 337.)

Mr. WILLIAMS: It says:

"Enclosed are the comparative figures of Checker and Yellow for the month of December."

Those figures relate to the miles per cab per day, revenue per cab per day, revenue per mile operated, shifts per cab, gasoline miles per gallon, maintenance cost per mile for both Checker and Yellow.

I offer Government's Exhibit 338, a letter from Rank to Parmelee to Cook of Yellow.

(Said document, so offered and received in evidence, was marked Government's Exhibit 338.)

Mr. WILLIAMS: It states that Rank has not received the material for completing the operation comparison for the two Chicago fleets for the month of January.

735 I offer as Government's Exhibit 339 letter from Oakland of CCM to Bieze of Yellow.

(Said document, so offered and received in evidence, was marked Government's Exhibit 339.)

Mr. WILLIAMS: Oakland states:

"Some time ago Mr. Markin requested you to forward to me copy of your monthly reports. To date, I

have not received any and wonder why you are holding them up."

I offer as Government's Exhibit 340 letter from Bieze of Yellow to Oakland of CCM, dated August 1, 1938.

(Said document, so offered and received in evidence, was marked Government's Exhibit 340.)

Mr. WILLIAMS: Bieze in this letter states:

"I have your letter of July 25, 1938, with reference to our monthly reports. We are enclosing herewith copies of the June, 1938, reports. The July reports will be forwarded to you on or about August 10th."

I offer as Government's Exhibit 341 a letter from Rank of Parmelee to Oakland of CCM, dated August 14, 1940.

736 (Said document, so offered and received in evidence was marked Government's Exhibit 341.)

Mr. WILLIAMS: This letter states:

"I am delighted with your offer to take over the Chicago comparative operating report. At present we are sending one copy to Mr. Markin, two copies to Mr. Bieze, two copies to you, and the following information to Mr. King:—"

Will counsel stipulate that Mr. King is Mr. James King of CCM?

Mr. LYNTON: Yes, I will so stipulate.

But I would like a stipulation from you also at this point. The Government's labeling of the exhibits from time to time, and we will advert to this at a later and perhaps more appropriate time in the trial, refers to letters in this fashion, taking for example the letter under consideration: "Letter from Rank of Parmelee to Oakland of CCM."

It is accurate, Mr. Rank was at that time employed by Parmelee, and it is accurate that Oakland was at that time employed by CCM. But what is not accurate is the

737 suggestion that these letters and many similar letters are written to Mr. Oakland in his capacity as an employee or officer of CCM.

It is the fact in connection with this letter and many many other letters in the record thus far covered that Mr. Oakland acted as an assistant to Mr. Markin, and it will be recalled that Mr. Markin was the adviser to Parmelee and, therefore, I should not like to have any confusion created as to the capacity in which Mr. Oakland acts.

Mr. WILLIAMS: We of course will not stipulate to anything concerning that capacity.

Mr. LYNTON: You will stipulate at least that your para-

phrases of what these letters denote are merely paraphrases and of course will not affect the exhibits themselves?

Mr. WILLIAMS: That is right. We are offering the actual exhibits in evidence, and not these excerpts.

The COURT: These captions do not appear on the exhibits anyway.

Mr. LYNTON: I know, sir.

The COURT: And when the Court receives them in evidence they are received minus the captions.

738 Mr. LYNTON: I realize that.

The COURT: So I do not think it is necessary for you to make a point on that because it is not a part of the evidence and it is not a part of the record.

Mr. LYNTON: My only suggestion was this, that as these things come in, and we have been receiving a lot of documents for several days now, there may be certain impressions created as a result of these labels, and I would at least like to have our position recorded so that some of these errors may at least be noted.

The COURT: The book is not received in evidence.

Mr. LYNTON: I understand that, of course.

Mr. WILLIAMS: I would like to point out that this Exhibit 341 is addressed to Mr. R. E. Oakland, Vice-President, Checker Cab Manufacturing Corporation, Kalamazoo, Michigan.

The letter continues:

"I would suggest that in the future you send one copy to Mr. Markin, one copy to this office, one copy to Mr. Bieze, one copy to Mr. Stouffer and such information as we have been giving Mr. King. This as-

739 sumes, of course, that you will take care of Mr. Sokoll."

Would you stipulate that is the same Mr. Sokoll at that time was with Cab Sales and Parts?

Mr. LYNTON: That is right.

Mr. WILLIAMS: I offer as Government's Exhibit 342 a letter from Oakland to Bieze with an attachment, dated December 26, 1941.

(Said document, so offered and received in evidence, was marked Government's Exhibit 342.)

Mr. WILLIAMS: The letter states:

"I am enclosing herewith a revised copy of the statistical data of the various operations for the month of September, which has been adjusted to conform with the majority of suggestions made by the various interested parties.

"Will you kindly submit your figures for the month of December and for the year 1941 to this office in accordance with this form, which will be distributed immediately after receipt of all the information. If there is any information required on this form which is
740 not available and which would entail any appreciable amount of work please omit it temporarily, until we decide if the results to be obtained from this report will justify the additional amount of work.

"I appreciate all the suggestions which you have made for getting this report in its present form, and will be very happy to receive any further suggestions which may help us to get the most out of this report."

The form relates to statistical data pertaining to large fleet operators of Checker cabs, for the month of September, 1941, and contains data for Chicago relating to both Yellow and Checker.

I offer as Government's Exhibit 343 a letter from Oakland of CCM to Bieze of Yellow.

(Said document, so offered and received in evidence, was marked Government's Exhibit 343.)

Mr. WILLIAMS:

"When I was in New York last week we decided that the comparative monthly statement of operations would be compiled and sent out under the super-
741 vision of R. J. Wyatt.

"Will you kindly submit the December statements and all subsequent statements to him."

I offer as Government's Exhibit 344 a letter from the Secretary of R. E. Oakland to Bieze of Yellow, dated June 4, 1943.

(Said document, so offered and received in evidence, was marked Government's Exhibit 344.)

Mr. WILLIAMS: This letter states:

"In our 'phone conversation today Mr. Oakland instructed me to send you the enclosed green book on Cab Sales and Parts Corporation."

I offer as Government's Exhibit 345 a letter from Knox to Oakland, dated July 5th, 1945.

(Said document, so offered and received in evidence, was marked Government's Exhibit 345.)

Mr. WILLIAMS:

"I am sending under separate cover two copies of each of the black book, yellow book and green book.

742 pertaining to operating statistics of the cab industry in Chicago for 1944.

"One set of books is for Mr. Markin and I would appreciate it if you would see that he receives them. The other set is for you."

I offer as Government's Exhibit 346 a letter from Bieze of Yellow to Markin, dated October 30, 1945.

(Said document, so offered and received in evidence, was marked Government's Exhibit 346.)

Mr. WILLIAMS: It states:

"As per our telephone conversation, I am enclosing herewith two photostatic copies of the 'Brown Book'."

I offer as Government's Exhibit 347, a letter from Samuels of Yellow to Oakland of CCM, dated September 5, 1941.

Mr. LYNTON: At this point I should like to have the record note that the defendants have ended their standing objection as to relevancy and materiality.

The COURT: The record may so show.

743 (Said document, so offered and received in evidence, was marked Government's Exhibit 347.)

Mr. WILLIAMS: This letter asked to purchase 395 Model A cabs.

I offer as Government's Exhibit 348 a letter from Oakland of CCM to Samuels of Yellow, dated September 6, 1941.

(Said document, so offered and received in evidence, was marked Government's Exhibit 348.)

Mr. WILLIAMS: The letter states that the production of CCM has all been sold, but that perhaps Samuels could obtain half of 200 cabs that have been ordered by Cab Sales.

I offer as Government's Exhibit 349 a letter from Samuels to Oakland, dated September 8, 1941.

(Said document, so offered and received in evidence, was marked Government's Exhibit 349.)

Mr. WILLIAMS: Samuels asks Oakland to negotiate with Cab Sales for 100 cabs.

I offer as Government's Exhibit 350 a letter from Oakland to Samuels dated September 9, 1941.

744 (Said document, so offered and received in evidence, was marked Government's Exhibit 350.)

Mr. WILLIAMS: This letter states that Oakland will be in Chicago Thursday to discuss with Samuels the proposal under which Cab Sales and Parts Corporation will be willing to relinquish part of their order for taxicabs.

I offer Government's Exhibit 351, consisting of a letter from the Vice-President of CCM to Samuels, dated September 11, 1941.

745 (Said document, so offered and received in evidence, was marked Government's Exhibit 351.)

Mr. WILLIAMS: (Reading)

"This will confirm our understanding of today. Cab Sales and Parts Corporation agrees to relinquish one hundred (100) of its order for two Hundred (200) taxicabs with us, and we will deliver these one hundred cabs to you with delivery starting the latter part of this month, at the same price and terms as your previous order, * * *"

I offer as Government's Exhibit 352 the minutes of directors meeting of Parmelee, dated November 26, 1934.

Mr. LYNTON: The defendants reinstate their objection on the basis of materiality and relevancy.

(Said document, so offered and received in evidence, was marked Government's Exhibit 352.)

Mr. WILLIAMS: (Reading)

"The Chairman then stated that Mr. Morris Mar-

746 kin, through a corporation controlled by him, was negotiating for the sale or other disposition of Checker Taxi Company and its affiliated organizations to Yellow Cab Company of Chicago, Illinois."

Then, beginning at the bottom of the page:

"The Chairman further stated that he was a director of Chicago Yellow Cab Company, and that he had made a preliminary survey of the respective operations in Chicago of the taxicab fleets of Checker Taxi Company and of Yellow Cab Company, and in his opinion a purchase by Yellow Cab Company (either by way of consolidation, merger, or acquisition of stock or assets, or otherwise, as determined by the Board of Directors of Yellow Cab Company with the approval of their counsel) would be advantageous and for the best interests of Yellow Cab Company, but only because of the elimination of aggressive competition, but also because of the operating economies and reorganization of operating methods which would result from the amalgamation of the two fleets, provided that such purchases or other acquisition could be effected on reasonable

747 terms without the payment of a substantial amount of cash."

The resolution at the bottom of the page consents to Yellow acquiring Checker.

Mr. LYNTON: Will the government stipulate that the proposal mentioned in this last exhibit was never consummated?

Mr. WILLIAMS: That is my understanding, yes.

Mr. LYNTON: You will so stipulate?

Mr. WILLIAMS: Yes.

I offer as Government's Exhibit 353 a letter from Oakland of CCM to C.P.G. Fuller, dated October 6, 1936.

Mr. LYNTON: With respect to this proposed exhibit and also with respect to the next two succeeding exhibits, in addition to all standing objections, the defendants object on the ground that these are privileged communications. They are of a like category as previously considered in this case.

(Said document, so offered and received in evidence, was marked Government's Exhibit 353.)

Mr. WILLIAMS: The letter states:

"After discussing the proposed consolidation of
748 Checker Taxi Company and Cab Sales and Parts Corporation with Mr. Markin, Bat Nelson and Mike Sokoll, we have decided as follows: * * *"

They decided to effect that consolidation. The last paragraph reads:

"Will you kindly get in touch with Mike Sokoll immediately to make arrangements to hold the meeting of Checker Taxi Company for the approval of this consolidation?"

I offer as Government's Exhibit 354 a letter from Oakland to Fuller, dated October 13, 1936.

(Said document, so offered and received in evidence, was marked Government's Exhibit 354.)

Mr. WILLIAMS: Oakland says:

"I presume that you realize that if we consolidate Checker Taxi Company and Cab Sales and Parts Corporation, that the resultant Company will have a deficit."

Mr. LYNTON: Will the government stipulate, in connection with Exhibits 353 and 354, that the consolidation mentioned in those exhibits was never consummated?

Mr. WILLIAMS: That is my understanding also.

749 Mr. LYNTON: And you will so stipulate?

Mr. WILLIAMS: Yes.

The final paragraph reads:

"Will you kindly give this matter some thought and advise me regarding your conclusions?"

I offer as Government's Exhibit 355, letter from Fuller to Rank, dated August 12, 1938.

Mr. LYNTON: In addition to all objections, including the objection as to competency and confidential communication,

I object to this on the ground it is a personal communication and not an official one. I invite the attention of the court to the last paragraph on that letter, on page 368.

Mr. WILLIAMS: The last paragraph states that it is a personal communication.

Mr. LYNTON: That is right.

The COURT: On page 368?

Mr. LYNTON: Page 368, the last paragraph of the previous exhibit.

The COURT: Beginning, "I need not state that I am"—

Mr. LYNTON: That is correct.

The COURT: It is received subject to objection and subject to being connected up and made material

750 (Said document, so offered and received in evidence, was marked Government's Exhibit 355.)

Mr. WILLIAMS: This letter discusses a suggestion for Yellow to sell its cabs to Chicago Yellow and then to lease them back from Chicago Yellow.

I offer as Government's Exhibit 356—

Mr. LYNTON: Before we pass that, will you again stipulate that the proposed reorganization considered in Exhibit 355 was never consummated?

Mr. WILLIAMS: If you state that as a fact.

Mr. LYNTON: Yes.

Mr. WILLIAMS: I will so stipulate.

I have offered Exhibit 356, consisting of a Journal of the Proceedings of the City Council of the City of Chicago, Illinois, Regular Meeting, Wednesday, September 25, 1929, at 2 p. m.

(Said document, so offered and received in evidence, was marked Government's Exhibit 356.)

Mr. WILLIAMS: This is what is sometimes referred to as the 1929 cab ordinance.

" 'Paragraph 1. No taxicab license, as hereinafter defined, shall hereafter be issued unless the Public

751 Vehicle License Commission, as hereinabove created, after a hearing, shall by resolution declare that public convenience and necessity require the proposed taxicab service for which application for a license is made; * * *,' "

I will omit down to next to the bottom of page 370.

" 'Paragraph 5. The applicant shall regularly and daily operate his or its licensed taxicabs during each day of the licensed year to the extent reasonably necessary to meet the public demand for such taxicab service.

Upon complete abandonment of taxicab service, for a period of ten consecutive days by an owner or operator of taxicab service, the Public Vehicle License Commission, upon hearing after five days notice to the said owner or operator shall thereupon recommend to the Mayor of the City of Chicago that the license of such owner or operator shall be revoked covering such taxicabs of the said owner or operator.' "

I offer as Government's Exhibit 357 a memoran-
752 dum from Markin to Hogan and others, dated January 22, 1934.

(Said document, so offered and received in evidence, was marked Government's Exhibit 357.)

Mr. WILLIAMS: I do not think I will read that one.

I offer Government's Exhibit 358, a letter from Rank to Bieze, dated April 17, 1934, with certain attachments consisting of a letter dated April 20, 1934 from Bieze to Rank, draft of proposed notice to stockholders, memorandum dated April 14, 1934, from E.M.S. to Rank, and newspaper clipping.

The letter from Rank to Bieze states:

"The statement of the Chicago Yellow Cab Company as published in the New York Times of April 14th is, in my opinion, detrimental to the efforts that you are making to obtain an increase in rates in Chicago and also detrimental to the taxicab situation in other cities. I think the release should have said something about the extraordinary volume of business that you did during the World's Fair. I know that the statement
753 as published will be interpreted by uninformed persons as an argument for low rates."

(Said document, so offered and received in evidence, was marked Government's Exhibit 358.)

On the following page there is a reply from Bieze to Rank, which states:

"In keeping with that suggestion, we have drafted such a statement and submitted same to Mr. Markin, and are enclosing copy of same which was sent to him today."

Mr. LYNTON: Will you read the last three paragraphs on page 372?

Mr. WILLIAMS: This is a draft of proposed notice to stockholders:

"Our losses from the operation of taxicabs since the close of the Fair are as follows:

November, 1933	$25,179.62
December, 1933	23,452.68
January, 1934	22,048.97
February, 1934	34,579.84
March, 1934	36,857.76

"Although these losses were sustained through the
754 operation of taxicabs, Chicago Yellow Cab Company, Inc., reports that the profits earned by its other subsidiaries and from investments amounted to a sufficient sum to wipe out the above loss for the first quarter of 1934 and resulted in a net profit of $23,369.77.

"The experiences of the taxicab operating company were brought on by a taxicab rate war in Chicago which commenced the middle of last July and has demonstrated that during ordinary business conditions, it is impossible for any taxicab operation to properly maintain itself on the rates of fare which have prevailed, because this low rate of fare has not created a sufficient volume of business to justify itself."

Mr. LYNTON: And the following paragraph on the next page, if you please.

Mr. WILLIAMS: (Reading)

"Every operator of taxicabs in Chicago has now finally admitted that the present rates of fare must necessarily result in operating losses and the employees of all companies in Chicago have petitioned the City Government for increases in the rates of fare. We
755 have called the attention of the Public Vehicle License Commission, which has jurisdiction over the taxicabs of Chicago, to the serious situation which now prevails, which is the direct result of this low rate of fare and we hope that within the near future, our City Council will enact legislation to remedy this situation."

I offer as Government's Exhibit 359, Minutes of Directors' Meeting of Yellow, dated June 21, 1934.

(Said document, so offered and received in evidence, was marked Government's Exhibit 359.)

Mr. WILLIAMS: The resolution reads:

"RESOLVED by the Board of Directors of Yellow Cab Company, a Maine corporation licensed to do business under the laws of the State of Illinois, that the following ordinance adopted by the City Council of the City of Chicago on May 18, 1934, be and the same is hereby approved and accepted for and on behalf of this corporation: * * *"

The ordinance is attached.

Is it stipulated that this is a copy of the actual ordinance?

Mr. Lyston: Subject to correction, yes.

Mr. Williams: (Reading)

"Section 2. Subject to the conditions and limitations of this ordinance, permission and authority are hereby granted to the licensees to operate taxicabs upon the public streets and other public ways within the corporate limits of the city for the term ending December 31, 1940 unless sooner terminated or revoked as hereinafter provided.

"Section 3. In addition to all license fees every licensee shall pay to the city quarter-annually in advance the sum of $12.50 for each taxicab of the licensee as compensation for the use of the streets and other public ways by authority of this ordinance."

On Page 375:

"Section 6.

"* * * provided, however, that no ordinance or regulation shall authorize the issuance of any license for
757 a taxicab nor shall any such license hereafter be issued except upon transfer to permit replacement of a taxicab or in the annual renewal of such license unless the commission, after a hearing, by resolution shall declare that public convenience and necessity requires additional taxicab service and provided further, that no license for a taxicab hereafter shall be issued or reissued upon transfer or in the annual renewal of such license unless and until the applicant for such license shall have accepted this ordinance."

Section 7 is somewhat similar to the 1929 ordinance in that it requires taxicabs to be operated regularly and provides that for breach the licenses can be cancelled.

Mr. Lyston: When you say "regularly," do you mean that the taxicabs shall be operated to the extent reasonably necessary to meet the public demand for taxicab service?

Mr. Williams: Whatever the precise language of the ordinance is.

Mr. Lyston: That is the language.

Mr. Williams: Then the minutes of Yellow and
758 with a resolution of Yellow to accept the ordinance.

I offer as Government's Exhibit 360, minutes of directors meeting of Chicago Yellow, dated June 21, 1934.

(Said document, so offered and received in evidence, was marked Government's Exhibit 360.)

Mr. WILLIAMS: These approve Yellow's action shown by the preceding Exhibit.

I offer as Government's Exhibit 361, letter from T. B. Hogan to Hinkel, dated April 11, 1934.

(Said document, so offered and received in evidence, was marked Government's Exhibit 361.)

Mr. WILLIAMS: He says:

"I have your inquiry of April 9, 1934 with reference to Yellow Cab rates and wages paid to our drivers,

"For your information it might be best that I mention various things that have taken place in Chicago during the past one and one-half years. In the first place, at various times we were attacked by some
759 one of the daily papers in Chicago with reference to the high rates—"

Mr. LYNTON: I would like you to read as much of that letter as you reasonably can. You can skip some of the statistics in it.

Mr. WILLIAMS: I will be glad to read it all.

Mr. LYNTON: You might paraphrase the rates.

Mr. WILLIAMS: I will skip the rates, then:

"In most instances we presented our books to the various newspapers and they, after having made an examination of our books, were satisfied that in order to operate a successful business it would be impossible to reduce the rates of fare.

"However, one of the newspapers failed to pay any attention to our books and took upon themselves to have daily editorials condemning the Yellow Cab Company for its high rates of fare and even went as far as to try and demoralize our drivers which was quite a handicap to try and overcome.

"The City Officials in the meantime, in making its investigation and trying to come to a satisfactory arrangement of fare schedules, had eight groups of
760 auditors make an examination of our books and records and came to the conclusion that it would be impossible for the Yellow Cab Company to reduce its rates and continue to be a successful company as Yellow Cab Company has been for the past twenty years.

"While the City Council and Taxicab Commissions were making their investigation, a number of drivers employed by one of our competitors took upon them-

selves to attempt to start a company of their own known as the Stickers Club and they in turn decided to operate on the basis of:

"15 cents for the first ⅓ mile or fraction thereof and

"5 cents for each additional ⅓ mile or fraction thereof, and

"5 cents for each 2 minutes of waiting time or fraction thereof, and the drivers of the Stickers Club in the meantime had made terrific inroads into the business of Yellow Cab Company.

"When this condition occurred, a rate war existed and therefore it was necessary for the Yellow Cab
761 Company to operate at the same rate as the Stickers Club or it might have resulted in the Yellow Company losing all of its business. Therefore, we did not think it advisable to meet the rate of fare of the Stickers Club, but to adopt the lowest possible rate of fare which we thought would be:

"10 cents for the first ⅔ mile or fraction thereof,

"10 cents for each additional ⅔ mile or fraction thereof, and

"10 cents for each 3 minutes of waiting time or fraction thereof.

When Yellow Cab adopted this rate the Stickers Club then started to operate on the basis of:

"5 cents for the first ⅓ mile or fraction thereof,

"5 cents for each additional ⅓ mile or fraction thereof, and

"5 cents for each 2 minutes of waiting time or fraction thereof.

"In the meantime the taxicab situation is a bad one as we as well as our competitors are suffering a ter-
762 rific loss and it is now necessary that we appeal to the public through newspaper advertising, for an adjustment in rates of fare. We are not asking for the old rate of fare, but we feel that we are entitled to some small increase over the present rate of fare. What the new rate of fare will be is something that we are unable to state as after all we are more or less at the mercy of the newspapers and the City Officials."

Mr. LYNTON: Would you mind at this point if I read a portion of the omitted part of your excerpt?

Mr. WILLIAMS: You may.

Mr. LYNTON: (Reading)

"The rates of commission to our drivers are based on a merit and demerit plan. All new drivers start to work

at 27½ per cent of gross revenue and after having received 104 merits are advanced to 39 per cent of the gross revenue and Gold Star men receive 41 per cent of the gross revenue. In addition thereto, any driver in the employ of the company for five years or more and having 260 merits is entitled to two weeks vacation
763 with pay based on his average weekly wage for the past year and any driver with three years of service and having 156 merits receives one week's vacation with pay based on his average weekly wage for the past year."

Mr. WILLIAMS: We will omit the number for Exhibit 362.

Mr. CLIMENKO: You mean you are not offering that?

Mr. WILLIAMS: I omit the number for 362. I do not offer it.

I offer as Government's Exhibit 363 a memorandum from Rank to Markin dated March 18, 1935.

(Said document, so offered and received in evidence was marked Government's Exhibit 363.)

Mr. WILLIAMS: (Reading)

"As per your telephone request today, I am enclosing herewith additional schedule. You will note that this schedule shows that the Yellow Cab Company can take the 500 additional cabs at the rate of $100.00 per month from December to April, inclusive, and still
764 maintain their bank balance at a minimum of $1,000.00

"In setting up the schedule handed to you on Saturday, we assumed that on May 1st the fleet would be reduced to 1,500 cabs; that these 1,500 cabs would earn the same total gross revenue and run the same total gross miles as would be run if the 2,166 cabs had been continued in operation. In other words, it was assumed that the fleet would be double-shifted to a point that would offset the decrease in the number of cabs."

I offer as Government's Exhibit 364 a letter from Rank of Parmelee to Kirkland, Fleming, Green & Martin, with attachment consisting of letter dated August 16, 1935, from Rank to Board of Directors of Yellow.

Mr. LYNTON: In addition to all standing objections, the objection is made on the ground of confidential communication.

The COURT: The same ruling.

(Said document, so offered and received in evidence, was marked Government's Exhibit 364.)

Mr. Williams: (Reading)

765 "We are enclosing herewith a copy of our letter of even date addressed to the Board of Directors of Yellow Cab Company relating to the proposed reduction in the number of their licenses in connection with the contemplated revision in the present city ordinance in Chicago.

"As operating managers of Yellow Cab Company and on behalf of the Board of Directors of that Company, we wish to request you to advise the Board of Directors whether, in your opinion, the City Council in Chicago may adopt an ordinance which permits the voluntary surrender or suspension of a portion of the licenses granted to any one operator with the mandatory provision in such ordinance, that should business conditions require the reissue of such surrendered or suspended licenses, such licenses upon demand of the taxicab operator would automatically be reissued to the operator surrendering the same.

"Necessarily, the Board of Directors of Yellow Cab Company would like to be advised by you as to

766 whether or not in the event of any such surrender, Yellow Cab Company could compel by appropriate proceedings the reissue of such licenses in the event business conditions require additional licenses in Chicago.

"In connection with the foregoing, we believe the Board of Directors should be advised as to how much time would be required to enforce their rights in the appropriate courts should the city authorities refuse to reissue the suspended licenses upon demand."

Then the attached letter of Rank to the Board of Directors:

"This will serve as a confirmation of the opinion given by me verbally before the Board at the meeting held on Thursday, August 15th, to the effect that in my opinion under business conditions now obtaining, or that can be foreseen in the immediate future, Yellow Cab Company will not suffer a loss in gross business because of the reduction in its fleet from 2,165 to 1,750 cabs provided that the necessary adjustments are made in its operating schedules and cabs are not

767 permitted to over crowd back lines or cab stands. Consequently, I am in favor of an effort to secure an extension of the limitation ordinance or a possible

franchise involving a reduction in the number of cabs to be allowed on the streets of Chicago, provided, again, that such ordinance will provide for a return to Yellow of any or all licenses surrendered by it in such numbers as may be deemed to be necessary by Yellow before any new licenses may be granted to other parties to operate taxicabs in the City of Chicago.

"I would like, however, to have the opinion of counsel with respect to the legality and enforcibility of such a provision in a city ordinance. I would also like to have the opinion of counsel as to the legal position of Yellow in the event that such a provision is written into the ordinance and the City of Chicago, or its official representative, should refuse for one reason or another to reissue the licenses voluntarily surrendered by the Yellow Cab Company."

768 I offer as Government's Exhibit 365, minutes of directors meeting of Yellow, dated September 19, 1935.

(Said document, so offered and received in evidence, was marked Government's Exhibit 365.)

Mr. LYNTON: May we revert to Exhibit 363?

I should like to record a correction of a stenographic character. One sentence there, as read by you and as contained in this excerpt book, reads:

"You will note that this schedule shows that the Yellow Cab Company can take the 500 additional cabs at the rate of $100 per month from December to April, inclusive, and still maintain their bank balance at a minimum of $1,000."

That should be, "a minimum of $1,000,000."

Mr. WILLIAMS: That is a substantial difference.

Exhibit 365 reads, and I might note Mr. Morris Markin was present at this meeting:

"The chairman thereupon referred to the informal discussion had at the last meeting of this Board, at which it was suggested that a new ten-year ordinance
769 in the City of Chicago might be obtained providing for the reduction of Yellow Cab Company's licenses from 2,166 to not less than 1,500 nor more than 1,750, without, however, reducing the licenses of competing companies at all. The advantage to this corporation would be the savings in license fees; such ordinance would provide that in case any additional licenses were granted, the parties voluntarily giving up licenses at

the time of the passage of the new ordinance would have first call when and if additional licenses were granted in the City of Chicago. He stated that the Board had indicated its unwillingness to enter into such an arrangement without the legal opinion of General Counsel of the company as to the probable enforceability of such an ordinance.

"Mr. Ellis of General Counsel thereupon stated that he had made an investigation of the right of Yellow Cab Company to enforce legally the terms of a proposed ordinance whereby if the number of licenses should ever be increased, Yellow Cab Company would have first call on the number of licenses taken away
770 from it by the proposed reduction. He stated that it was his opinion that licensees relinquishing licenses in proportion to the proposed reduction could not legally force the city, upon reinstatement of the total number of licenses, to award such additional licenses to those relinquishing the same."

It was then resolved:

"RESOLVED that no further consideration be given to obtaining a new taxicab ordinance in the City of Chicago for a ten-year or other period, which ordinance would provide that this corporation reduce its number of cabs and surrender a portion of its licenses, unless the competing cab companies in the City of Chicago agree with this company to reduce their number of cabs and licenses proportionately."

Mr. LUXTON: I think you skipped a sentence in Mr. Ellis' opinion. May I read it?

Mr. WILLIAMS: I'll read it:

"He further stated that if the City Council in future years should amend this proposed ordinance by repealing that part of it which has to do with the
771 reissuance of licenses to all those relinquishing such licenses, Yellow Cab Company would be faced with long and costly litigation and that this litigation alone would amount to a practical deprivation of the company's rights, even though it should ultimately be successful in the litigation."

I offer as Government's Exhibit 366 Minutes of Directors Meeting of Chicago Yellow dated September 19, 1935.

(Said document, so offered and received in evidence, was marked Government's Exhibit 366.)

Mr. WILLIAMS: Chicago Yellow approved the action of Yellow in the minutes which I have just read.

The last paragraph of the excerpt reads:

"Mr. Levin Rank and Mr. Paul Houston did not vote in favor of the resolution as adopted, but referred to Mr. Rank's letter of August 16, 1935, to the Board of Directors of Yellow Cab Company, and Mr. Ellis' written reply thereto. Mr. Houston stated that his opinion in reference to the foregoing matter was the same as Mr. Rank's opinion."

772 Mr. Hotchkiss will take the next few exhibits.

The Court: The court will recess for ten minutes.

(Recess taken.)

773 The Court: Proceed.

Mr. Hotchkiss: The next exhibit is Government's Exhibit 367, consisting of a letter from Rank to the Board of Directors of Yellow, dated June 14, 1937.

(Said document, so offered and received in evidence, was marked Government's Exhibit 367.)

Mr. Hotchkiss: Mr. Lynton has suggested that I read the whole letter:

"In the early part of March of this year, the dissatisfaction of the drivers employed by the company, with respect to wages and working conditions, came to a head and resulted in a strike of some three or four weeks duration. The strike was finally settled by the signing of a contract running to December 31, 1938 with the International Brotherhood of Teamsters, an affiliate of the American Federation of Labor. This contract called for a closed shop, a straight 35% commission, the elimination of charges for gasoline and required the company to provide, at its own expense,

774 for washing and cleaning its taxicabs.

"At the time this contract was negotiated, it was understood that the increase in rate of commission to be paid to drivers would not be sufficient to bring their earnings up to a point where they were comparable to the earnings of men engaged in other similar occupations in the City of Chicago, or with the earnings of taxicab drivers in other major cities where regulatory legislation similar to Chicago was in existence. For example: In Pittsburgh, where 100% of the licenses are controlled by a single interest, the drivers' wages in 1936 amounted to $3.76 per day per man; in Minneapolis, where 60% of the licenses are controlled by one interest, the drivers' wages in 1936 amounted to $3.08 per day per man; in Chicago where 90% of the licenses

are controlled by this company and its chief competitors, drivers' wages in 1936 amounted to an average of $2.25 per day per man; in New York, where no regulatory legislation existed until the spring of this
775 year, taxicab drivers employed by the National Transportation Company were paid in 1936 an average of $2.50 per day per man.

"It was pointed out to the Union officials that the Company could not further increase the rate of commission to provide a satisfactory wage and at the same time remain in business. That other steps, such as an increase in the rate of fare, and or a reduction in the number of operating units would have to be worked out in order to accomplish the purpose.

"The Union officials, quite fortunately, were broad gauged and intelligent business men and agreed that the Company should have time to reconstruct its business to meet new conditions and succeeded in convincing the drivers that their first interests lay in the formation of a sound labor organization and that substantial increases in their earnings would come as the result of the establishment of such an organization under proper auspices.

"It is estimated, on the basis of the revenues and
776 operating costs for the year 1936, that the increase in drivers' commissions and in operating expenses, under the present contract with the Union, would result in increased operating charges of approximately $325,000.00. This, coupled with the fact that a substantial portion of the net income shown by the Company and its parent company on a consolidated basis for the year 1936 represented unusual and possibly non-recurring profits, leads me to the conclusion that, if the company had operated on the basis and at the labor costs under which it is now operating, applying in all other respects actual overhead costs and other charges, they would have realized a consolidated net income of approximately $200,000.00, instead of a net income of a little over $600,000.00.

"In looking ahead to the future of the company, under new labor conditions, it seems unwise to rely on a straight 35% commission to drivers and to assume that there will be no increase demanded by
777 other employees of the company. It is therefore expedient, in considering the future of the company,

to presuppose a basis of at least 37½% commission to drivers and a general increase of 10% in wages to other employees. Under this wage structure, and assuming no change is made in the policy of the company, the operating costs would be further increased by the sum of $200,000.00 thereby wiping out entirely the company's present prospective earnings.

"At the same time, the drivers' earnings, on a 37½% commission basis, would only be increased to $2.90 per man per day, and it can be expected that demands will be made for not less than a 40% commission, and in addition, a guaranteed minimum wage, such demands having been recently made and acceded to in other cities, including New York, Cleveland and Toledo. When such demands are made on the company, and in my opinion they will be made in the near future, the company will have no defense in paying a lesser rate
778 of commission than that applicable in other cities, unless it can be shown, without fear of contradiction, that the average earnings of drivers in Chicago are equal to those of drivers in such cities paying the higher rate of commission.

"It is quite obvious that the management cannot allow its present policies to continue without very definite and fundamental revisions and that both the officers and the management corporation must be prepared to offer to the Board of Directors, without loss of time, such plans for future operation as will, in their judgment, enable the company to meet its labor situation and at the same time continue to show a reasonable return to stockholders on the money which they have invested in the business.

"The writer, being the principal officer of the management company, and in addition, a member of the Board of Directors of this company, has given considerable thought and study to the problem and is convinced that its solution lies in the reduction of the
779 number of units operated by this company and its principal competitor. He further believes that the total number of such units operated should not exceed 2500 under existing circumstances; that every effort should be made to induce the City Council to amend the regulatory ordinance as a condition precedent to such a reduction in the number of operating units, so as to afford the maximum of protection to the company.

"It is his further belief that negotiations should be immediately opened by the company with its chief competitor, looking toward effecting such a reduction and that such negotiations should be conducted with the view of having the company's chief competitor make such a reduction in its fleet as would restore the 60/40 ratio of operating units which existed at the time the present regulatory ordinance was put into effect."

Next I offer Government's Exhibit 368, consisting of the minutes of directors' meeting of Parmelee, dated June 15, 1937.

780 (Said document, so offered and received in evidence, was marked Government's Exhibit 368.)

Mr. Horowitz: There was present Mr. Rank, Mr. Wyatt, Mr. Houston, Mr. Laird and Mr. Condon.

Mr. Rank, President of the Corporation, called the meeting to order.

"The Chairman then submitted to the meeting a proposed letter dated June 14, 1937, * * *"

The one which I read presumably.

"* * * addressed to the Board of Directors of Yellow Cab Company, containing his recommendations with reference to the solution of several problems confronting Yellow Cab Company."

Then the Board approved those recommendations, and further said:

"it is the sense of this Board of Directors"

That is, of Parmelee.

"that such recommendations are sound and should be adopted by the Board of Directors of Yellow Cab Company, and that Levin Rank be and he hereby is authorized, directed and empowered to execute said
781 letter and file the same with the Board of Directors of Yellow Cab Company, and is further authorized to notify Yellow Cab Company that the recommendations therein contained are those of this Corporation and of all its individual Directors;"

Now, we have a group of documents dealing with the response of defendants, including particularly Yellow and Checker to the Parmelee proposal of June 14, 1937.

I offer Government's Exhibit 369, being the minutes of directors' meeting of Yellow, dated June 16, 1937.

(Said document, so offered and received in evidence, was marked Government's Exhibit 369.)

Mr. Hotchkiss: There was present at that meeting Samuels, Hogan, Bieze, Houston, Rank, Stouffer and Laird. Wyatt and King, Directors of Chicago Yellow, were also present. Hogan acted as Chairman.

Then this letter previously read into evidence was presented to the Board of Directors of Yellow, and the Board then approved the letter and the proposals contained therein.

782 Next is Government's Exhibit 370, a letter from Rank to Samuels of Yellow, dated June 23, 1937.

(Said document, so offered and received in evidence, was marked Government's Exhibit 370.)

Mr. Hotchkiss: It states:

"I am more convinced than ever that we will be obliged to ask the Municipal authorities to amend the ordinance with respect to the number of taxicab licenses. In the circumstances, I feel it would be unwise to reduce our advertising appropriation at this time.

"Will you kindly discuss this matter with the other officers and let me know how you and they feel about the matter."

Government's Exhibit 371 is Samuels' reply to that letter, dated June 25, 1937.

(Said document, so offered and received in evidence, was marked Government's Exhibit 371.)

Mr. Hotchkiss: It says:

"Your letter in regard to advertising has just been
783 received and in all probability it will be the best policy under present circumstances, to continue our present advertising appropriation until we definitely arrive at a conclusion to the contrary. This seems to be the idea of all the officers here."

Government's Exhibit 372 consists of a letter dated June 26, 1937, from Samuels of Yellow to Board of Directors of Yellow.

(Said document, so offered and received in evidence, was marked Government's Exhibit 372.)

Mr. Hotchkiss: It refers to the settlement of the drivers' strike and the wage situation.

Mr. Lynton: Will you read that paragraph, Mr. Hotchkiss?

Mr. Hotchkiss: Yes:

"After the drivers' strike which was finally settled by the signing of a contract with the Teamsters Union, a number of lengthy discussions, by the Board of Direc-

tors, of the affairs of the Company took place and it was decided that the officers should consider wages and operating conditions and submit a plan for con-
784 sideration to the Board of Directors.

"In accordance therewith the officers submit the following for consideration:

"The wage situation on drivers is such that we shall have to look forward to some system of operation which will result in higher wages for the drivers, together with increases in wages to other employees. In order to bring about this result, it will be necessary to reduce competition among the cab drivers. This can only be done through a reduction in the number of cabs and drivers. The reduction in drivers should be on a seasonable schedule.

"No reduction in the number of cabs is possible without action on the part of the City Council. At the present time, Yellow Cab Company owns 2166 licenses and operates 1650 of such licenses. Keeping in mind that the question of percentage of commission to the drivers alone is not the important factor and realizing that there are more than sufficient cabs in Chicago, we are of the opinion that recommendations
785 should be made to the City Council that a pro rata reduction of licenses be made by the two large companies.

"At the present time there are 4108 licenses issued in Chicago. We are of the opinion that 3000 licensed cabs are sufficient to handle the cab business in Chicago. On the basis of a reasonable reduction of the licensed cabs in Chicago, Yellow would then have 1500 licenses and Checker 1000 licenses."

Then the last paragraph:

"We recommend that the average number of men per day during the summer should be 2000 and that the average number of men per day during the winter should be 2200. On the basis of an average of 2100 men per day throughout the year, the average pay per driver would be approximately $3.20 per day, * * *"

The next is Government's Exhibit 373, being the minutes of directors' meeting of Yellow, dated July 15, 1937.

(Said document, so offered and received in evi-
786 dence, was marked Government's Exhibit 373.)

Mr. Hotchkiss: We have present Hogan, Samuels, Bieze, Stouffer, Rank and Laird, and they approved the resolution that was passed.

It was:

"RESOLVED that the Secretary of the corporation be and he is hereby authorized and directed to insert in the minutes of this meeting a copy of the proposed plan of procedure in reference to wages and plan of operation submitted by the officers of this corporation."

Next is Government's Exhibit 374, being a letter from Rank to Scholz, dated June 23rd, 1937.

(Said document, so offered and received in evidence, was marked Government's Exhibit 374.)

Mr. HOTCHKISS: It says:

"I notice in your 'News Extracts' an item from the Chicago Tribune on June 16th, written by Martin P. Durkin, Director of the Illinois Department of Labor, in which it is stated that the earnings of cab drivers
787 have, in the past, been notoriously low.

"I do not suppose that the paper is in any way responsible for this article, but I rather think that you should drop in the American offices on your next visit to Chicago and point out to them that the companies are making every effort to adjust the wages of their drivers to meet present day standards."

Next is Government's Exhibit 375, a letter from C. P. G. Fuller to "Ben", in other words, Samuels of Yellow, dated August 9th, 1937.

Mr. LYNTON: In addition to the standing objections, the defendant objects to the admission of the next four exhibits on the basis of privileged communication.

Those exhibits are proposed Exhibits 375, 376, 376-A and 377.

(Said document, so offered and received in evidence, was marked Government's Exhibit 375.)

Mr. HOTCHKISS:

"In examining the form of ordinance that you sent to me, I find that it is somewhat different than the
788 ordinance which was shown to me last week. I assume that the proposed ordinance you sent to me is the one now before the City Council but I believe that my comments to Mr. Green are equally applicable to this revised form. It seems to me, however, that a useful purpose would be served by the addition not only of the clauses you suggest in your letter but also a clause in Section 1, granting to present taxicab operators the privilege as a matter of right to renew their existing taxicab licenses even though such re-

newal after December 31, 1937, would mean that more than 3,000 licenses would be issued."

Dropping down to paragraph 4:

"I agree with Mr. Ellis that the proposed ordinance should definitely define the elimination of 1,000 cabs, provided that such elimination be accomplished voluntarily by licensees surrendering or abandoning licenses. I believe that any ordinance which would force any particular licensee to cancel his licenses while leav-
789 ing other licensees with their present licenses would be discriminatory and void."

I offer Government's Exhibit 376, being a letter from Howard Ellis of the firm of Kirkland, Fleming, Green, Martin & Ellis to Mr. Samuels dated August 18, 1937.

(Said document, so offered and received in evidence, was marked Government's Exhibit 376.)

Mr. Hotchkiss: It says:

"I am figuring over in my mind what would be the legal effect of an ordinance reducing the number of cabs on the Chicago streets to 3,000. Upon the assumption that such ordinance is valid and is not in abrogation of the contract ordinance of May 18, 1934, how would the reduction be affected and what would be the the result so far as Yellow and Checker are concerned?"

Then he discusses several different methods by which this reduction might be brought about.

Government's Exhibit 376(a) is a letter from Ellis of the firm of Kirkland, Fleming, Green, Martin & Ellis, to Chicago Yellow, attention Mr. Samuels, dated August 27, 1937.

790 (Said document, so offered and received in evidence, was marked Government's Exhibit 376(a).)

Mr. Hotchkiss: It says:

"You have asked our opinion regarding the right of the officers and directors of your company to enter into a contract with, and make a payment on behalf of your company to, the Checker Cab Company for a reduction on its part of its licensed cabs from the present number of 1500 to 1000, while Yellow, at the same time, reduces the number of its licensed cabs from 2166 to 1500, such contract and payment to be premised upon the passage by the City Council of the City of Chicago of an ordinance authorizing reduction of the total number of cabs from 4108 to 3000 upon terms,

conditions and provisions substantially the same as those contained in the ordinance at present under consideration by the Transportation Committee of the City Council."

Then follows his opinion on page 394, the last paragraph of the excerpted portion:

791 "In view of the circumstances that Yellow now hold 516 licenses which are not operated and for which no cabs are available for operation, and which licenses we are given to understand are subject in any event to cancellation for non-user, Mr. Levin Rank informs us that a pro rata reduction in the Yellow and Checker fleets would result in a reduction in the Yellow fleet of 275 and a reduction in the Checker fleet of 250, making a total reduction in the Yellow and Checker fleets of 1041, an additional reduction of 51 licenses being made in the combined fleets of independent licensees, a gross reduction of 1108. If Mr. Rank's figures be accurate, Yellow stands to lose 791 licenses as compared with a 250 loss by the Checker Taxi Company. The contemplated agreement provides for a total reduction in Yellow's licenses of 666 as compared to a total reduction in the Checker fleet of 500. By a forced reduction, therefore, Yellow would lose 791 licenses, as compared to 666 voluntarily surrendered
792 by contract. Checker, by a forced reduction, would lose 250 licenses, as compared to 500 surrendered by contract. It is our opinion that, for this difference of 375 licenses, effected by a voluntary contractual reduction, as distinguished from an involuntary pro rata reduction, your company would be entitled to pay the Checker Cab Company a consideration commensurate with the value of such 375 license differential."

Then Government's Exhibit 377—

Mr. LYNTON: Will you read the last sentence of Exhibit 376?

Mr. HOTCHKISS: Certainly:

"We therefore advise you that, subject to the foregoing, the proposed contract between Checker and Yellow is valid, providing the payment by Yellow to Checker is fairly commensurate with the consideration received by you."

Government's Exhibit 377 is a letter dated September 15, 1937, from Chadbourne, Hunt, Jaeckel & Brown to Parmelee, from New York.

(Said document, so offered and received in evi-
793 dence, was marked Government's Exhibit 377.)

Mr. Hotchkiss: It reads:

"As operating managers of Yellow Cab Company, of Chicago, Illinois, you have submitted to us a proposed agreement to be executed by Yellow Cab Company with Checker Taxi Company of Chicago and with Cab Sales & Parts Corporation, providing, *inter alia*, for the surrender of certain licenses by Checker Taxi Company and the acquisition of certain rights by Yellow Cab Company."

Then it goes on to set forth the proposal, and a discussion of the proposed ordinance, then towards the top of page 396, second paragraph, I will read the first part:

"The proposed amendatory ordinance, by declaration and by its provisions, relieves licensees in Chicago of the public duty to operate in the aggregate more than 3,000 licenses. The operation, therefore, of licenses in excess of that number is permissive rather than mandatory on the part of the licensees, and consequently the licensees have the right but not the
794 obligation to operate such licenses."

Then I turn over to page 397 of the excerpts.

Mr. Lynton: Will you read the last sentence of the third paragraph on page 396?

Mr. Hotchkiss: I will read the whole paragraph:

"We are, accordingly, of the opinion that, upon the adoption of an ordinance in the form submitted to us, the form of agreement proposed to be executed by Yellow Cab Company imposes no obligations on Yellow Cab Company which are illegal and which Yellow Cab Company may not properly perform within the purview of existing Illinois statutes. We are of the further opinion that the proposed agreement, upon the adoption of said proposed ordinance, when duly executed, will be valid and legally enforcible contract and that it is not illegal for Yellow Cab Company to enter into and perform the same."

On page 397, the first full paragraph, towards the top of the page:

795 "We are, accordingly, of the opinion that any agreement providing for the payment of adequate compensation to Checker Taxi Company for the relinquishment in part of its property rights under the May 18, 1934 ordinance is not illegal but is valid and enforcible in accordance with its terms."

Government's Exhibit 378 consists of a memorandum of terms of proposed agreement.

Mr. LYNTON: There is a particular objection as well as the general standing objections.

The particular objection is that this document is incompetent in that it is unidentified.

Mr. HOTCHKISS: It is an unsigned document, and we might say that the defendants, in response to the interrogatory and request for admissions on authenticity of documents stated that this was unsigned and unidentifiable, and they could not therefore make any admissions with respect to it.

We therefore withdraw our offer at the present time.

The COURT: That is 378?

Mr. HOTCHKISS: 378. We are withdrawing the offer at the present time subject to renewing the offer after
796 having established a more adequate basis for introduction.

Next I offer Government's Exhibit 379, consisting of a letter from Samuels to Yellow's attorney, Ellis, of the firm of Kirkland, Fleming, Green, Martin & Ellis, dated August 30, 1937.

Mr. LYNTON: With respect to this proposed exhibit and the next exhibit, in addition to the standing objections, the objection is made on the basis of privileged communications.

(Said document, so offered and received in evidence, was marked Government's Exhibit 379.)

Mr. HOTCHKISS:

"I have read over the rough draft of agreement as outlined and believe that you have failed to catch one of the most important parts of this agreement; namely, that this credit upon the outstanding Cab Sales & Parts notes is to be applied upon the notes as they mature in the order of their maturity * * *"

and so on.

Next I offer Government's Exhibit 380, which consists of a letter from Mr. Ellis to Samuels of Yellow with
797 an attachment consisting of rough draft copy of proposed agreement between Chicago Yellow, Yellow, Cab Sales and Checker Cab.

(Said document, so offered and received in evidence, was marked Government's Exhibit 380.)

798 Mr. HOTCHKISS: The covering letter is simply a transmittal of the proposed rough draft agreement:

"Mr. Ellis: (Not to be taken as final in any particular)."

Immediately after the words "rough draft of Yellow Checker contract (incorporating suggestions of Messrs. Samuels and Fuller)."

Then it recites excerpts of the 1934 ordinance, then on top of page 400, I read:

"Whereas, Yellow and Checker duly accepted, in writing, the terms of such ordinance in accordance with the provisions thereof, and thereby Yellow secured to itself, subject to the provisions of such ordinance, the right to hold, own and operate, and does so hold, own and operate, 2,166 of such taxicab licenses, and thereby Checker secured to itself, subject to the provisions of such ordinance, the right to hold, own and operate, and does so hold, own and operate, 1,500 of such taxicab licenses; and

"Whereas, Yellow is not at the present time, and
799 has not for a period of more than ninety days, operated 516 of the licenses owned by it, nor has it had equipment available for the purpose of exercising the rights and privileges conferred on it by reason of such 516 licenses, and therefore Checker maintains that each of such 516 licenses is immediately subject to forfeiture on complaint to the Mayor of the City of Chicago, in accordance with the provisions of the ordinance of May 18, 1934, and Yellow's acceptance thereof."

Then it recites that the public vehicle license commission has reported to the City Council that the public convenience and necessity demands a reduction of the number of cab licenses from 4,108 to not more than 3,000, and has made a finding to that effect. Then there is a proposed ordinance referred to. Then going on:

"Whereas, the parties, in the interests of and to promote the public convenience and necessity, are desirous of securing a reduction in the number of taxicab licenses in the City of Chicago to not more than 3,000, and feel that they, as distinguished from
800 other licenses, under the ordinance of May 18, 1934, are best situated to accomplish such a reduction;"

and it recites Checker's method.

Mr. Lynton: Will you read that sentence?

Mr. Hotchkiss: Yes.

"Whereas, Checker is engaged in a method of taxicab operation which entails the operation of taxicabs by individual drivers and others for their own account, whereunder the operators pay a fixed monthly fee un-

der drivers' contracts and the parties recognize that the reduction in the number of licenses would cause Checker to cancel a number of drivers' contracts which, in turn, would result in a substantial loss of revenue to it; and

"Whereas, Checker is unwilling to accept the provisions of said ordinance of 1937, and the rights and obligations thereunder or to waive and relinquish any of its rights under the ordinance of May 18, 1934, without compensation therefor; and

"Whereas, Checker and Yellow made certain verbal arrangements for the compensation of Checker for
801 certain losses suffered by Checker as a result of the taxi drivers' strike in Chicago of 1937; and

"Whereas Yellow is desirous of accepting the provisions of said ordinance of 1937, and the rights and obligations thereunder, and Checker is desirous of accepting said ordinance but only on the terms and provisions of this agreement; and

"Whereas, Chicago Yellow owns one hundred per cent of the capital stock of Yellow and Cab Sales owns ninety-eight per cent of the capital stock of Checker; and

"Whereas, Chicago Yellow owns certain Ten-Year 6% Collateral Trust Gold Notes of Cab Sales,"

and further down the page:

"Whereas, Chicago Yellow owns certain 6% Collateral Trust Sinking Fund Gold Notes of Cab Sales."

Then Checker promises and agrees as follows:

"1. Checker promises and agrees as follows:

"a) To relinquish to the City of Chicago to be
802 cancelled 500 of the taxicab licenses now held by it on or before the day of , 19 , which 500 licenses shall be relinquished from that group of licenses owned by Checker and operated by driver-owned taxicabs, as distinguished from licenses used by taxicabs owned by Checker or by Cab Sales;

"b) To sell and assign to Yellow the right to renew such licenses relinquished under paragraph 1.a) above immediately after each of such 500 licenses is relinquished without any consideration for such sale and assignment in addition to that hereunder given.

"c) To effectively cancel drivers' contracts, and to save Yellow and Chicago Yellow harmless from any liability by reason of such cancellation, whereunder drivers operate such driver-owned taxicabs by virtue

of the privileges granted by the 500 licenses to be relinquished as aforesaid."

And they agree to accept the terms of this ordinance which has not been adopted, this being a proposal made August 31, 1937, and to relinquish to the City of
803 Chicago to be cancelled 666 cab licenses now held by it, and so on, then it goes on:

"b) To pay to Cab Sales $ per license for each taxicab license relinquished by Checker up to 500 licenses after each such license is relinquished and effectively cancelled, such payments, nevertheless, to be made in the form of credits to be authorized by Chicago Yellow and to be applied on the Ten Year 6% Collateral Trust Gold Notes and the 6% Collateral Trust Sinking Fund Gold Notes of Cab Sales now owned by Chicago Yellow and held by The First National Bank of Chicago under collateral trust agreements."

On the next page, 403:

"Checker and Cab Sales hereby waive and release any rights or claims against Yellow by reason of any understanding or verbal arrangement made in connection with the settlement of the taxicab drivers' strike in 1937, and the entire agreement between the parties with respect to such settlement and with respect to the matters hereinbefore set forth is set forth in this
804 agreement."

Then I offer Government's Exhibit 381, appearing on page 404 of the excerpts. It is a letter from Rank to Samuels, dated December 2, 1937.

(Said document, so offered and received in evidence, was marked Government's Exhibit 381.)

Mr. Hotchkiss: It says:

"With respect to the accompanying letter agreement, I think the last three lines of Paragraph #1 will have to be changed so as to permit operation by either Checker Taxi Company, or Cab Sales & Parts Corporation, or their successors, or wholly owned subsidiaries. I have nothing particular in mind, in making this suggestion as to successors or subsidiaries, except that I think Checker should be free to reorganize, combine or otherwise change their corporate set-up and to operate cabs with a new Company, if they so desire."

Government's Exhibit No. 382 is a letter dated December 7, 1937 from Oakland of CCM to Sokoll of Checker.

805 (Said document, so offered and received in evidence, was marked Government's Exhibit 382.)

It says:

"I discussed the Cab Sales—Yellow Cab contract with Mr. Markin and Mr. Rank and I am giving you herewith Mr. Markin's decision on the points which we had under discussion:"

Then the decision is thereupon given.

Next is a group of documents dealing with the 1937 interim agreement under which Yellow agreed to pay Checker for withdrawing cabs from service. This was before any ordinance went into effect.

Government's Exhibit 383 is a letter dated July 8, 1937 fr[illegible] Sokoll to Rank with attachment.

(Said document, so offered and received in evidence, was marked Government's Exhibit 383.)

Mr. Hotchkiss: Sokol states:

"I am transmitting herewith a list of cabs withdrawn from service and statement of moneys lost by
806 Checker because of their withdrawal. The amount due us is $6,833 93. Will you please have check forwarded to us?"

Then the attachment, and the attachment is headed, "Checker Taxi Company" and the address. Then after that, the words:

"Cabs withdrawn from service and not replaced, April, May and June, 1937."

There are 160 cabs listed in addition to the two that are shown on the excerpt. Then certain sums are shown at the end of the exhibit which total thirteen thousand odd dollars, then the last entry is: "Due Checker 50 per cent," and that is a $6,000 plus item.

Government's Exhibit 384 is a listing by Checker of cabs withdrawn from service and not replaced April, May, June, July, August and September, 1937.

(Said document, so offered and received in evidence, was marked Government's Exhibit 384.)

Mr. Hotchkiss: And here we have a form similar to that in the preceding exhibit. There are 204 cabs listed in addition to the two listed in this excerpt and the grand total set forth in money at the end of the item is forty-
807 eight thousand odd dollars.

Then Government's Exhibit 385 is a letter from Sokoll, dated December 28, 1937, to Markin with attachments.

(Said document, so offered and received in evidence, was marked Government's Exhibit 385.)

808 Mr. Hotchkiss: It says:

"I am transmitting herewith a schedule showing the actual amount of revenue which Checker has lost due to retiring cars under the interim agreement with Yellow from April 1, 1937 to and including November 30, 1937. I am also including the estimated revenue for December, using the November figure.

"There will, of course, be some additional cars in the December schedule which can be accounted for later.

"According to this schedule the amount due as is $44,081.05."

Then he lists their losses.

Government's Exhibit No. 386 is plaintiff's interrogatory No. 25, directed to Checker.

(Said document, so offered and received in evidence, was marked Government's Exhibit 386.)

Mr. Hotchkiss: It says:

"With respect to your denial of certain of the allegations of paragraph 42 of the amended complaint, state:

809 "(a) Whether any sums were paid to Checker by reason of its withdrawal of taxicabs from service during 1937, when each payment was made, and the payer making each payment;

"(b) Whether any such payments were made pursuant to an unwritten understanding;

"(c) Whether any of such payments were made pursuant to a written understanding and, if so, the date, parties, and present custody of such understanding and copies thereof."

Government's Exhibit 387 is Checker's answer to plaintiff's interrogatory No. 25.

(Said document, so offered and received in evidence, was marked Government's Exhibit 387.)

Mr. Hotchkiss: And to (a), (b) and (c), Checker answers:

"No."

Government's Exhibit 388 consists of the salient features and provisions of the ordinance dated December 22, 1937, passed by the Chicago City Council.

810 (Said document, so offered and received in evidence, was marked Government's Exhibit 388.)

Mr. HOTCHKISS: Now, the second WHEREAS—
Mr. LYNTON: Will you read the first WHEREAS?
Mr. HOTCHKISS: Do you want the first?
Mr. LYNTON: Yes.
Mr. HOTCHKISS: I will be glad to do that.

"WHEREAS, The Public Vehicle License Commissioner has reported the result of investigation of conditions prevailing in the operation of taxicabs within the city and has determined that public convenience and necessity require that the number of taxicabs within the City of Chicago be reduced to 3,000; and

"WHEREAS, Certain licenses under the ordinance of May 18, 1934, have agreed to surrender a sufficient number of taxicab licenses to effect a reduction of the number of taxicabs within the City of Chicago to 3,000; now, therefore,

"Be it Ordained by the City Council of the City of Chicago:

"Section 1. In the event that a sufficient number
811 of taxicab licenses shall be surrendered by licensees under the ordinance of May 18, 1934, to reduce the number of taxicabs within the City of Chicago to 3,000 on or before March 31, 1938, no taxicab license shall thereafter be issued except upon transfer to permit replacement of taxicab or in the annual renewal of any such license or upon assignment of any such license or upon assignment of the right to apply for such license as hereinafter provided or upon revocation for cause or termination in any other manner of any such license.

"Section 2. Notwithstanding Section 1 of this ordinance taxicab licenses in excess of 3,000 may be issued when authorized by general ordinance without consent of licensees under the ordinance of May 18, 1934; provided that such licensees who shall have voluntarily surrendered any taxicab licenses or their right to renewal of any taxicab licenses on or before March 31, 1938, shall have the right to such number of taxicab licenses as were so surrendered, and such
812 right shall be prior to the right of any person, firm or corporation until such licensees who have so surrendered their taxicab licenses shall have either released their right to apply for taxicab licenses or shall have failed to make application therefor"—

and so on.

Then Section 6 towards the bottom of page 409 provides that the ordinance shall be in full force and effect provided

one or more licenses under the ordinance of May 18, 1934, shall within thirty days after passage of this ordinance file with the City Clerk formal written acceptance of this ordinance and shall have surrendered at least 616 taxicab licenses.

Next we have Government's Exhibit 389, consisting of minutes of directors' meeting of Parmelee.

(Said document, so offered and received in evidence, was marked Government's Exhibit 389.)

Mr. HOTCHKISS: There were present Rank, Houston, Laird, Condon and Wyatt.

There was a resolution:

813 "RESOLVED that this Corporation as management advisers of Yellow Cab Company approve the execution and performance by said Yellow Cab Company of a contract in substantially the form of contract to be dated as of January 3, 1938, between said Yellow Cab Company, Checker Taxi Company and Cab Sales"—

Next, Government Exhibit 390, dated January 6, 1938, consists of a letter from Fuller to Rank.

Mr. LYSTON: Objection is made on the basis of privileged communication in addition to all standing objections.

(Said document, so offered and received in evidence, was marked Government's Exhibit 390.)

Mr. HOTCHKISS: Mr. Fuller states:

"I have prepared and enclose herewith five copies of the revision of the Chicago Yellow-Checker contract. You will note that I have kept this at $550 per license but have provided for the payment of $45,000 upon the signing of the contract as part of the consideration therefor. It seems to me that this is preferable
814 to increasing the license payment to $640, not only from a tax but also from a policy point of view."

Next, Government's Exhibit 391, minutes of directors' meeting of Checker, dated January 3, 1938.

(Said document, so offered and received in evidence, was marked Government's Exhibit 391.)

Mr. HOTCHKISS: There the directors of Checker approve the contract presented to the meeting.

Government's Exhibit 392 is an agreement dated January 3, 1938, entered into between Yellow, Cab Sales and Checker.

(Said document, so offered and received in evidence, was marked Government's Exhibit 392.)

Mr. Hotchkiss: It recites the passage of the ordinance of 1934, and then states, on page 412:

"Whereas, Yellow and Checker duly accepted in writing the terms of such ordinance in accordance with the provisions thereof, and thereby Yellow secured to itself, subject to the provisions of such ordinance,
815 the right to hold, own and operate, and does so hold, own and operate, 2,166 of such taxicab licenses, and thereby Checker secured to itself, subject to the provisions of such ordinance, the right to hold, own and operate, and does so hold, own and operate 1,500 of such taxicab licenses;"—

The Court: May I have your indulgence for a moment?

(Short recess taken.)

816 Mr. Hotchkiss:

"Whereas, Yellow is not at the present time, and has not for a period of more than ninety days, operated 511 of the licenses owned by it, nor has it had equipment available for the purpose of exercising the rights and privileges conferred on it by reason of such 511 licenses, and therefore Checker maintains that each of such 511 licenses is immediately subject to forfeiture on complaint to the Mayor of the City of Chicago, in accordance with the provisions of the ordinance of May 18, 1934, and Yellow's acceptance thereof; and

"Whereas the Public Vehicle License Commission of the City of Chicago has reported to the City Council of the City of Chicago that public convenience and necessity demand an immediate reduction in the number of taxicab licenses from 4,108 to not more than 3,000, and has made a finding to that effect, and the City Council of the City of Chicago has agreed to such finding and has also so found and, in pursuance of such findings, has passed an ordinance a copy of which is
817 attached hereto, made a part hereof, and marked 'Exhibit B,' which ordinance provides that in the event that a sufficient number of taxicab licenses shall be voluntarily surrendered by licensees under the ordinance of May 18, 1934, to reduce the number of taxicabs within the City of Chicago to 3,000 on or before March 31, 1938, * * *"

and then it proceeds with a resumé of the terms of the ordinance.

Then toward the bottom of page 413—

Mr. LYNTON: Will you read the second recital on page 413, please?

Mr. HOTCHKISS: Yes.

"WHEREAS, Checker is engaged in a method of taxicab operation which entails the operation of taxicabs under the taxicab licenses of Checker by individual drivers and others for their own account pursuant to 'drivers' contracts' with Checker, under which contracts operators pay a fixed monthly fee, and the parties recognize that the reduction in the number of licenses would result in a substantial loss of revenue to Checker."

818 Then, toward the bottom of page 413—

Mr. LYNTON: Just before you go to that, will you also note that in the last recital clause, which you need not read, it mentions $380,000 of collateral trust notes plus $150,000 of collateral trust notes, which aggregate $530,000. I think in the opening made in this case there was some reference, that the collateral trust notes outstanding as of this date were only $325,000, and you sought to draw an inference which is contrary to the fact.

Mr. HOTCHKISS: We will read what is stated:

"WHEREAS, Yellow or its affiliated companies own or control certain Ten-Year 6% Collateral Trust Gold Notes of Cab Sales in the total face amount of $380,000 maturing on May 1, 1941, and certain 6% Collateral Trust Sinking Fund Gold Notes of Cab Sales in the total face amount of $150,000 maturing on October 1, 1942, such maturity dates being subject in each case to the retirement of certain of such notes prior to such dates by Cab Sales in the total face amount of

819 $150,000 maturing on October 1, 1942," and so on.

"NOW, THEREFORE, for and in consideration of the premises and of the mutual promises, covenants and agreements herein contained, and in consideration of the payment of the sum of $45,000 by Yellow to Checker simultaneously with the execution and delivery of this Agreement, receipt whereof is hereby acknowledged by Checker, and for other good and valuable consideration, IT IS HEREBY MUTUALLY AGREED by and between the parties hereto as follows:

"1. Checker promises and agrees as follows:

"(a) to relinquish to the City of Chicago to be cancelled 500 of the taxicab licenses now held by it on or before the 31st day of March, 1938;

"(b) to accept by appropriate instruments in writing all of the provisions of said ordinance (Exhibit B) promptly after the execution and delivery of this Agreement, coincident with the acceptance by Yellow of said ordinance; and

820 "(c) to sell, assign and set over to Yellow the right of Checker under said ordinance (Exhibit B) promptly after the execution and delivery of this Agreement, to renew and obtain the reissuance of 240 of said 500 licenses to be so cancelled by Checker hereunder.

"2. Yellow promises and agrees as follows:

"(a) to accept by appropriate instruments in writing all of the provisions of said ordinance (Exhibit B) promptly after the execution and delivery of this Agreement, coincident with the acceptance by Checker of said ordinance; and

"(b) to pay or cause to be paid to Checker, in addition to the $45,000 paid to Checker simultaneously with the execution and delivery of this Agreement, and in full payment for all of its covenants and agreements herein contained and for the performance of all of the acts to be performed by Checker hereunder and the loss of revenue resulting thereby, the sum of $550 per license for each taxicab license relinquished and ef-

821 fectively cancelled by Checker up to 500 licenses, such payments nevertheless to be made, at the option of Yellow, in the Cab Sales Notes in lieu of cash, such Notes to be accepted at principal amount and accrued interest; and such payments nevertheless to be made in twenty quarterly installments of $13,750 each, payable on the first days of April, July, October and January in each year, beginning on April 1, 1938 and ending on January 1, 1943; * * *"

Then, on page 415 of the excerpts:

"3. In the event that at any time subsequent to the execution of this Agreement the City Council of the City of Chicago, or other body having jurisdiction in the premises, determines that public safety, convenience and necessity require the issuance of taxicab licenses in addition to the number then outstanding but not in excess of the licenses surrendered pursuant to the terms of this Agreement and any licenses surrendered by Yellow, and determines to issue additional licenses, Yellow and Checker hereby covenant and

agree, so far as they are legally able to do so, as follows:

"(a) Yellow will apply for, and the parties hereto will attempt to secure for it, 60% of such additional licenses to be issued; and

"(b) Checker will apply for, and the parties hereto will attempt to secure for it, 40% of such additional licenses to be issued; to the end that the total number of such additional licenses to be issued to Yellow and Checker shall be divided between them on the basis of three-fifths (3/5) thereof to Yellow and two-fifths (2/5) thereof to Checker."

Mr. LYNTON: Will you read Clause 6?

Mr. HOTCHKISS: Certainly:

"6. Any provision herein contained to the contrary notwithstanding, it is hereby stipulated and agreed that should the public interest require the issuance of additional licenses and the operation of additional taxicabs in the City of Chicago by reason of public health, safety, convenience or necessity, or otherwise, the parties hereto shall not be prohibited by any clause or terms of this Agreement from furnishing such additional service to the extent then permitted by law, and nothing in this Agreement contained shall limit or prohibit in any such event the furnishing of additional and extended services to the public by the parties hereto, to the extent that by regulatory ordinance, legislative enactment, order or otherwise, any duty or requirement is imposed upon them to so furnish such services."

And then the signatures to that document. Mr. Hogan signs as President of Yellow Cab; Joseph McMath, as Vice President of Cab Sales; Mr. Sokoll as President of Checker Taxi.

Mr. LYNTON: May it be noted that Paragraph 5 of the draft which appears on page 403 and which you read is not contained in the final agreement which is this last exhibit, No. 393?

Mr. HOTCHKISS: I did not hear you.

Mr. LYNTON: I just made a notation for the record. There is a certain paragraph in the draft which you read which is not contained in the final agreement, and I merely made the observation so that the record might have it.

The Court: It is now 4:30, gentlemen, and it is time to adjourn.

That brings the first week of this trial to a close. About how much longer does the government estimate the balance of their evidence will take?

Mr. Hotchkiss: Your Honor, we wish to present to you the situation we find ourselves in. I am advised by defense counsel they are taking a plane at 6 o'clock this evening for New York City, and plan on returning here Monday and will get back probably around noon.

We anticipate the government will take approximately one day to complete its case, including the reading and the oral testimony.

The Court: That is your complete case?

Mr. Hotchkiss: Yes.

The Court: In other words, one more day.

Mr. Hotchkiss: Yes. Then we suggest that the remainder of the Government's case—and I believe this meets with the approval of defense counsel—the remainder of the government's case be put over until after this recess of the coming week, if that meets with the convenience of the court.

825 The Court: I have no objection. When are you coming back from New York?

Mr. Lynton: This next week we will be in Chicago about noon, on Monday. That is during the interim week.

The Court: In other words, there will be no session in this case this coming Monday, you are talking about?

Mr. Lynton: Yes, the 24th.

Mr. Hotchkiss: The suggestion would be that this case be adjourned until the following week.

The Court: As I understand you, you are not ready to proceed now, until 2 o'clock Monday afternoon?

Mr. Lynton: That is right.

The Court: That is this coming Monday?

Mr. Lynton: Yes.

The Court: So that there will be no session in the morning.

Mr. Lynton: Yes.

Mr. Hotchkiss: But we suggest that the whole matter be put over not until Monday, but until a week from Monday, when we resume. In other words, that there be a week of recess starting—

The Court: You want to present another day's

826 evidence?

Mr. Hotchkiss: Yes, but we would present it—

The COURT: From Monday noon until Tuesday noon?

Mr. HOTCHKISS: Yes.

The COURT: In other words, Monday afternoon and Tuesday afternoon?

Mr. HOTCHKISS: If the court wishes.

The COURT: Well, yes.

Mr. HOTCHKISS: Or, if the court desires, we could put ours over until June 1st.

The COURT: You mean to adjourn now until June 1st?

Mr. HOTCHKISS: Yes.

The COURT: It is all right with me, if it is all right with counsel.

Mr. LYNTON: It is immaterial to me.

The COURT: Because the court has plenty of work here.

Mr. HOTCHKISS: I would suggest it.

The COURT: If that is the case, why, let's do that.

So that this trial is suspended then until June 1st?

Mr. HOTCHKISS: Very well.

827 The COURT: Very well. Then you will be here in the morning?

Mr. LYNTON: Yes.

Mr. HOTCHKISS: The government then hopes to finish in one day.

The COURT: One day?

Mr. HOTCHKISS: Yes.

The COURT: Then the defense will proceed. You estimate your defense will last how long?

Mr. LYNTON: I should say about ten days or two weeks.

The COURT: Ten days would be two weeks of trial.

Mr. LYNTON: Yes, I would say so.

The COURT: About two weeks. That will carry us over to about the middle of June on this case. Very well.

(Whereupon the further trial of the above-entitled case was adjourned until Tuesday, June 1, 1948, at 10 o'clock a. m.)

828 No. 46 C 1339

UNITED STATES OF AMERICA, PLAINTIFF,

vs.

YELLOW CAB COMPANY, *et al.*, DEFENDANTS.

Before Judge LaBuy

Tuesday, June 1, 1948,
10 o'clock a. m.

Court met pursuant to adjournment.

Present:

Mr. Hotchkiss
Mr. Williams
Mr. Lynton
Mr. Ginsberg
Mr. Fuller
Mr. Climenko

The CLERK: The case on trial.

The COURT: Proceed, please.

Mr. HOTCHKISS: At the last session of the court in this case, the government had offered Government's Exhibit No. 392, which appears at page 411 of the excerpts, that exhibit being an agreement between Yellow, Cab Sales and Checker with reference to the reduction in the number of licenses agreed upon among those parties.

829 Government's Exhibit No. 393, appearing on page 417, I now offer.

(Said document, so offered and received in evidence, was marked Government's Exhibit 393.)

Mr. HOTCHKISS: This consists of the minutes of a directors' meeting of Yellow held January 24, 1938.

Mr. LYNTON: As we resume this morning, may the record show that the standing objections of the defendants continue?

The COURT: They may.

Mr. HOTCHKISS: At this meeting, there were present R. H. Bieze, Mr. Hogan, Mr. Houston, Mr. Laird and Mr. Rank. Mr. Hogan acted as chairman and Mr. Bieze as secretary.

"The chairman thereupon requested the Secretary to read a contract dated as of January 3, 1938, between this corporation on the one hand, and Cab Sales and Parts Corporation and Checker Taxi Company on the other hand, in reference to the reduction in the

number of taxicab licenses provided by the ordinance passed by the City Council of the City of Chicago on
830 the 22nd day of December, 1937, amending the ordinance passed May 18, 1934, and stated that the execution and performance of such contract by this corporation had been approved by Parmelee Transportation Company under its management contract."

Thereupon the directors approved the execution of this agreement.

I now offer Government's Exhibit No. 394, appearing at the top of page 418 of the excerpts.

(Said document, so offered and received in evidence, was marked Government's Exhibit 394.)

Mr. Hotchkiss: This consists of a letter from Oakland of CCM to Markin of CCM with an attachment. The letter is dated August 17, 1939. It says:

"I am enclosing herewith a schedule showing the average number of cabs owned, average number of cabs operated, the revenue of cabs, and the percentage to total revenue of cabs operated in the Yellow and Checker fleets in the city of Chicago.

"Up to December 1, 1937 Checker Taxi had licenses for 1,500 cabs and operated practically all of them.
831 The Yellow Cab Company had licenses for 2,166 cabs but were only operating approximately 1,600.

"During the years 1935, 1936 and 1937 Yellow Cab Company received approximately 51% of the entire business done by these two companies. In January 1938 a contract was made between these two companies whereby Checker was to reduce its fleet to 1,000 cabs, and Chicago Yellow to 1,500 cabs, and Yellow Cab Company was to reimburse Checker $55,000.00 per year for a period of five years for this reduction in cabs.

"As a result of this reduction in the number of cabs Yellow Cab increased their percentage of total business to over 55% in 1938, and it is estimated that in 1939 they will receive 61% of the business."

Then a discussion of the revenue situation. Then following that is a schedule showing the average number of cabs owned, average number of cabs operated, revenue of cabs and percentage to total revenue on cabs operated in the Yellow and Checker fleets in the city of Chicago for the years 1935 to 1939, with the figures to be estimated for the year 1939.

832 Next I offer Government's Exhibit 395.

(Said document, so offered and received in evidence, was marked Government's Exhibit 395.)

Mr. Hotchkiss: There is no date on this item. It consists of a letter from Laird of Parmelee Motor Fuel to Stouffer of Chicago Yellow. He refers to a report of the Utilities Motor Fuel Company on the purchase of gasoline by Yellow and Checker. He goes on to say, after citing the number of gallons purchased by each, that:

"On this basis, Yellow Cab Company of Chicago used 58.7% of the gasoline and the Checker Cab Company 41.2% which shows Checker are getting better than their 60-40 percentage of the business."

Then he goes on to discuss the figures and says, in the next to the last paragraph:

"the final result is Chicago Yellow is getting 57.3% of the dollar volume of business compared to 42.7% for the Checker Cab."

Next, I offer Government's Exhibit No. 396 consisting of a letter from Bieze to Oakland with certain attachments.

833 (Said document, so offered and received in evidence, was marked Government's Exhibit 396.)

Mr. Hotchkiss: The letter is dated August 9, 1945, and it states:

"With further reference to your letter of June 28, 1945 and our last discussion in connection with new cabs.

"We are attaching herewith list showing total number of licenses, months and years in which new cabs were received and also showing the models. You will note this list covers all of the model Checker cabs acquired since May, 1929.

"There is also enclosed herewith list showing the number of licenses for the years of 1929 to 1941, inclusive."

Then follows a list that shows that in May, 1929, Yellow Cab had 2,350 licenses, and that in the months of May, June and July of 1929, they purchased 1,000 new cabs, being the K6 Model of cabs. Then in November and December of that year, 1929, as shown on page 420 of the excerpts, they purchased additional cabs, bringing the total to 1,035 for the year 1929.

834 In 1930, they purchased 1,165 cabs, and then in 1931, they purchased 1,001 cabs, still having 2,350 licenses. There is no record of any purchases of cabs by the Yellow Cab Company between 1932 and 1935.

Then in 1935, the record—

835 Mr. LYNTON: You will stipulate no cabs were purchased during those years, won't you?

Mr. HOTCHKISS: If that is a fact, we will stipulate.

Mr. LYNTON: Yes.

Mr. HOTCHKISS: Very well.

Then, starting in August of 1935 they began, Yellow began purchasing the Y model cabs.

During the remainder of the year Yellow purchased 1,000 cabs. At that time they had 2166 licenses.

In 1936 and in 1937 650 additional Y cabs were purchased.

The next purchase program starts in the early part of May of 1940. It continues on through 1940 and 1941, during which period of time Yellow has 1595 licenses to operate cabs. They purchased during that period of time 1450 Model A cabs. That purchase included 75 rebuilt Model A cabs.

I do not offer Government's Exhibit 397.

The parties to this action; however, enter into a stipulation that on December 28, 1937, there was a meeting of the directors of the defendant Yellow, and there were present at that meeting the following directors: Thomas B.

836 Hogan, Benjamin Samuels, R. H. Bieze, Ralph E. Stouffer, Paul L. Houston, Walter S. Laird, Levin Rank. There were also present James A. King and Raymond J. Wyatt of the Board of Chicago Yellow, and at this meeting Thomas B. Hogan was the Chairman, and Mr. Bieze was Secretary.

On motion made, seconded and carried, it was resolved that the officers of Yellow are authorized to accept the terms of a certain ordinance passed by the City Council of the City of Chicago on the 22d day of December, 1937, in regard reduction of licensed taxicabs and extension of the license period and, also, to surrender such number of taxicab licenses, under the provisions of said last mentioned ordinance, as said officers in their discretion may see fit, in order to comply with the terms therein specified.

Mr. LYNTON: The defendants so stipulate, subject to their standing objections.

Mr. HOTCHKISS: Yes.

Next I offer Government's Exhibit 398, consisting, on the face of it, of an index to volume of records on cab Sales, etc., with certain attached records and tables.

837 (Said document, so offered and received in evidence, was marked Government's Exhibit 398.)

Mr. HOTCHKISS: One portion of the index carries the heading, "Cabs in Operation," "Cab Sales & Parts", by year, and refers to certain pages for these items. In referring to those pages I find there is a heading, "Cabs in Operation":

> "The following table shows the average number of cabs operated by Cab Sales and Parts Corporation and Checker Taxi Company by months."

And then, Table A shows the cabs in operation, and states:

> "The following figures are from the records of the Cab Sales and Parts Corporation and the Checker Taxi Company,"

showing that during 1936 the combined fleet operated in the vicinity of somewhat over 1400 cabs.

Mr. LYNTON: I would like to clarify that situation. It does not show that the combined fleets operated a total of approximately 1450 cabs. It shows that of the cabs operated under the name Checker, which aggregated in January, 1936, 1454, 500 were operated by Cab Sales and 954 were operated by drivers within the Checker name.

838 Mr. HOTCHKISS: Very well. And all operated under the name of Checker.

Mr. LYNTON: Yes. I stated that.

Mr. HOTCHKISS: Very well.

It shows that for the year 1936 of this total number of cabs operated throughout the year Cab Sales operated during each month 500 cabs. There was a minor variation in the number of cabs operated under this heading of Checker, there being slightly under 1,000 each month.

The further figures show the total number in the Cab Sales operations and the Checker operations, and show, on page 425, that as of July, 1941, all cabs were operated by Cab Sales and no cabs were operated by Checker, there being at that time a total of 800 cabs being operated by Cab Sales.

Next I offer Government's Exhibit 398(a), being an index to volume of records on Yellow, etc., with certain attached records and tables.

(Said document, so offered and received in evidence, was marked Government's Exhibit 398(a).)

Mr. HOTCHKISS: This is on page 426 of the excerpts, and it shows that on the index there is a reference to the

839 cabs in operation by the Yellow Cab Company, by years.

"CABS IN OPERATION

"The following table shows the average number of cabs operated by the Yellow Cab Company by months.

"The chart immediately following the table indicates graphically the figures shown in the table."

We do not include the chart, and show here only the figures.

The figures show that in the month of January, 1936, Yellow Cab Company had 1,719 cabs in operation. I wish to point out at this point that a previous exhibit has shown that at this time Yellow had 2,166 licenses.

In June of 1936, Yellow had 1,325 cabs in operation.

Starting in January of 1937, in that month this exhibit shows that Yellow had 1620 cabs in operation. Thereafter, during the remaining months to August of 1937, the number remains fairly constant.

Mr. LYNTON: In order to clarify this, you will stipulate, will you not, that this record shows that the number

840 of cabs in operation means the number of cabs that were placed on the streets of Chicago as a daily or monthly or weekly average, allowing for maintenance and repair factor which may not permit a particular cab at a particular time to be placed on the Chicago streets.

Mr. HOTCHKISS: I cannot stipulate on that point at this time—

Mr. LYNTON: All right.

Mr. HOTCHKISS: —because the facts of the matter will be brought out during the course of further testimony and introduction of evidence.

The exhibit shows, toward the top of page 427, that during the month of November, 1937, during the time that Yellow had 2,166 licenses, it had 1,506 cabs in operation.

The next month was December, when the City Council of Chicago passed the ordinance of December, of 1937, which has been offered in evidence, which provided for the permissive reduction in the number of licenses. In that month Yellow had 1,501 cabs in operation.

Dropping down to 1938, in April of 1938 Yellow had 1,480 cabs in operation. At that time its licenses, through this license surrender program, dropped to 1,595 licenses.

841 In January, 1939, Yellow had 1,351 cabs in operation.

In April, of 1940, it had 1,001 cabs in operation, though previous exhibits show it had 1,595 licenses.

This record shows that in April, 1942, it then had 1,450 cabs in operation; and this record shows that as being constant through the remainder of 1942 and 1943.

842 I offer Government's Exhibit 398(b) in evidence.

(Said document, so offered and received in evidence, was marked Government's Exhibit 398(b).)

Mr. Hotchkiss: Government's Exhibit 398(b) is an index to volume of records on Yellow and Chicago Cab operating companies with certain attached records and tables. This is on page 429.

Section 1 consists of statistics of the Yellow Cab Company with reference to drivers' commissions, and Table No. 7 of that exhibit shows the average daily commissions earned by drivers.

"The following figures are based on operating statistics of the Yellow Cab Company and represent the probable average daily commission earned by drivers for cabs operating in the City of Chicago. The figures are average daily by months."

I refer particularly to four months of 1937.

In January, 1937 the average daily commission earned by drivers, as set forth in this table, was $3.41; in April,

843 $2.79; in July, $2.71; in October, $2.80.

In 1938, January, it was $3.53; April, $2.78; July, $2.75; October $2.87.

So the figures go.

Starting in January of 1941, the figures are, for January $4.13, in July, $3.79.

In 1942, January, $4.85, July, $4.97.

In 1943, January, $6.95, July, $6.95.

Mr. Lynton: I should like to refer to this exhibit and invite the attention of the court to the fact that this schedule shows that the average daily commission earned by drivers rose from the first date mentioned, July, 1935, from $2.12 until the last date mentioned, October, 1943, $7.20—from $2.12 to $7.20.

Mr. Hotchkiss: Next is Government's Exhibit 399, which I offer in evidence.

(Said document, so offered and received in evidence, was marked Government's Exhibit 399.)

Mr. Hotchkiss: Exhibit 399 consists of a letter from Laird of Parmelee Motor Fuel Co. to Markin, dated November 1, 1944. It reads:

"At our last Directors Meeting of the Chicago Yel-
844 low Cab Company, it was brought up by Mr. Biezie of the Chicago Yellow Cab that he could not understand why the Checker Cab had 600 cars that were available for the road and Yellow Cab Company had only approximately 578 that they could put on the road, I told Mr. Biezie that I would investigate. I have finally solved the mystery."

And then he explains the mystery.

I offer Government's Exhibit 400.

(Said document, so offered and received in evidence, was marked Government's Exhibit 400.)

Mr. Hotchkiss: Exhibit 400 consists of a letter dated February 15, 1946, appearing at the bottom of page 430 of the excerpts,

"Letter from Edward J. Gorman, Commissioner, City of Chicago, Public Vehicle License Commission to Leonard Bessman, Antitrust Division, with attachment consisting of listing of the number of taxicabs licensed in the City of Chicago from 1929 to 1945, inclusive."

It reads:

845 "Confirming telephone conversation of today, attached hereto is a list of taxicab licenses in the City of Chicago from 1929 to 1945 inclusive."

It shows the four columns, at page 431, after the date column.

The first column is the date.

The next column shows the licenses for Yellow Cab, the next one for Checker cabs, the next for independents, and then the total.

In 1929 Yellow had 2,350 licenses; Checker, 1,750; independents, 1,189 and the total was 5,289.

In 1931, the Yellow had 2,350 licenses; Checker had 1,500, independents had 681 and the total was 4,531.

In 1934 the figures are: Yellow, 2,166; Checker, 1,500; independents, 442. The total was 4,108.

In 1938, the figures are: Yellow, 1,595; Checker, 1,000; independents, 405; total of 3,000.

Those figures thereafter remain constant each year through 1945.

846 Next, on page 432 is a heading referring to Yellow non-use of cabs for which licenses were issued after December 22, 1937.

Government's Exhibit 401, dated February 4, 1943, consists of a letter from Bieze of Yellow to Wyatt of Parmelee.

(Said document, so offered and received in evidence, was marked Government's Exhibit 401.)

Mr. Hotchkiss: It reads:

"You will recall that we are operating 1450 Model A cabs and have an additional 145 Model Y cabs in storage at a warehouse in order to be in a position at all times to show that we have 1595 pieces of equipment to cover the 1595 licenses that are issued to our company under the terms of the Chicago Ordinance and Franchise. While it is true we have 1595 licensed taxicabs, at no time have we attempted to actually operate more than 1450 cabs. None of the 1450 Model Y cabs have been operated since the last of the Model A cabs were purchased in 1941."

The next is Government's Exhibit 402, consisting
847 of a letter from Bieze to Rank, with attachments, the letter being dated February 24, 1943.

(Said document, so offered and received in evidence, was marked Government's Exhibit 402.)

Mr. Hotchkiss: It reads:

"In accordance with my telephone conversation with you of this date, we have in storage 145 taxicabs. We are holding Illinois license plates for the year 1943 covering all of said taxicabs and none of these plates are attached to the cabs. All of these plates are held in our vaults at 57 East 21st Street.

"We wish to assure you that none of these 145 taxicabs will be placed in operation at any time during the year 1943, unless we give you reasonable notice in advance in writing. Our present impression, however, is that none of these cabs will at any time be operated during this present year."

Next I offer Government's Exhibit 403, consisting of a letter dated February 1, 1944, from McMath of TMC to Bieze of Yellow.

848 (Said document, so offered and received in evidence, was marked Government's Exhibit 403.)

Mr. Hotchkiss: It reads:

"With reference to the cabs which we have in storage and those which will be put in storage in the future, we wish to advise you that we have not taken out any fire and theft insurance, inasmuch as this equipment belongs to your company.

"We know that you have your regular insurance on these cabs, however, your policy may specify all

locations other than those in which we have the cabs stored at the present moment.

"This letter will serve to advise you of this condition so that the proper advice may be given to your insurance companies."

The next is a group of documents under the heading appearing at the top of page 433 of the excerpts: "Warehousing in New York of Cabs on Which Yellow Secures Illinois Licenses."

I offer Government's Exhibit 404, consisting of a letter from one "Danny" to one "Rudolph", the Rudolph
849 being, the evidence will show, Rudolph Bieze, and Danny being Mr. Danny Dannemann.

(Said document, so offered and received in evidence, was marked Government's Exhibit 404.)

Mr. Hotchkiss: This letter, Government's Exhibit 404, having a New York date line:

"'M. M.' recently asked me to send you a list of serial numbers, etc, on 175 vehicles that are presently warehoused by us. Such a list is enclosed and it totals 175 cabs.

"Is this action sufficient for your needs? Regards
October 17, '44 Danny"

The next is Government's Exhibit 405, consisting of a letter from Bieze to Markin, dated November 1, 1944.

(Said document, so offered and received in evidence, was marked Government's Exhibit 405.)

Mr. Hotchkiss: It reads:

"In accordance with your instructions, Danny sent to me a list of serial numbers, etc., on 175 vehicles that are presently warehoused.

850 "Is it agreeable to you that I send to Mr. Dannemann the enclosed (copy) letter. * * * 11-3-44 Mr. R. H. Bieze: I see no reason why you shouldn't send the attached letter to Mr. Dannemann. M. Markin"

Then Government's Exhibit 406 consists of a letter from Bieze to Dannemann, dated November 1, 1944.

(Said document, so offered and received in evidence, was marked Government's Exhibit 406.)

Mr. Hotchkiss: It reads:

"I have your letter of October 17, 1944, together with serial numbers, etc., on 175 vehicles.

"In order for us to make application for the State licenses, it is absolutely necessary that we receive from you the State Title for 149 Model A cabs.

"Would you be good enough to forward these to us at your earliest convenience"

The next is Government's Exhibit 407, dated May 25, 1945, being a letter from Vice President of Yellow to James R. Quinn.

851 (Said document, so offered and received in evidence, was marked Government's Exhibit 407.)

Mr. Hotchkiss: It reads:

"In accord with a request made at the recent meeting of the Committee on Local Transportation, we submit for your consideration the following statement of facts:

"Prior to our entry into World War II, the City of Chicago always enjoyed the finest taxicab service in the country. In a large measure this was due to this company's time-honored consistent policy of providing the finest taxicabs available, meticulous maintenance, a most capable driver personnel, and early and frequent taxicab replacement.

"The war, with its attendant necessary restrictions and regulations, made impossible a continuation of this policy. Nevertheless, and notwithstanding, the City of Chicago continues to have the best taxicab service in the country.

"With the imminent and certain lifting of war-time restrictions, this company is now fully prepared with

852 complete and comprehensive plans providing the best taxicabs obtainable, together with necessary parts, machinery, additional new garages and relocation of existing garages, making possible the extension of our service over a larger area including the outlying sections of the city in contemplation of post war changed conditions. All this will involve an expenditure of several million dollars, which are immediately available.

"For thirty years this company has ably demonstrated its ability to give the people of Chicago the finest taxicab service. Backed by complete sound financial responsibility, a capable and loyal Union driver and operating personnel working harmoniously with efficient management, and an enviable long record of honorable dealings and cooperation with the people of the City of Chicago, this company now seeks the privilege of the continuation of its service.

"The present contract ordinance between the City of Chicago and all Chicago taxicab operators expires
853 December 31, 1945. In view of our large present investment, the necessary immediate additional investment of many million dollars, and the need for the opportunity to increase our scope and ability to better serve the people and City of Chicago, this company joins with all Chicago taxicab operators in petitioning your Honorable body to grant to the holders of all present taxicab licenses an extension of the existing contract for a period of ten years beginning January 1, 1946."

Next is Government's Exhibit 408, consisting of a letter from Bieze to Markin, dated May 29, 1945.

(Said document, so offered and received in evidence, was marked Government's Exhibit 408.)

Mr. Hotchkiss: It says:

"There is enclosed herewith Transcript of 'Proceedings of The Committee on Local Transportation of the City Council of Chicago' held on Wednesday, May 23, 1945. I was able to borrow this copy with the understanding that I would see to it that same would be returned.

854 "I thought you might particularly be interested in reading Bowler's statement running from page 75 to 76.

"Would you be good enough to see to it that this Transcript is returned to me."

I offer next Government's Exhibit 409, consisting of a letter from Markin to Bieze dated May 31, 1945.

(Said document, so offered and received in evidence, was marked Government's Exhibit 409.)

Mr. Hotchkiss: It reads:

"We are returning to you herewith Transcript of 'Proceedings of the Committee on Local Transportation of the City Council of Chicago' (held on Wednesday, May 23, 1945), which you sent to me with your letter of May 29th."

Government's Exhibit 410, dated June 12, 1945, consists of a letter from Samuels to James R. Quinn, Chairman of the Committee on Local Transportation of the City Council.

(Said document, so offered and received in evidence, was marked Government's Exhibit 410.)

855 Mr. Hotchkiss: And it states:

"As a result of the action on June 11th of the Committee on Local Transportation of the City Council, in recommending to the full City Council that the present contract taxicab ordinance be extended for a period of five (5) years, from January 1, 1946, instead of the ten (10) year period which was respectfully sought, according to our letter of June 7, 1945, we wish to advise you that the passage of an ordinance extending the present contract ordinance for a period of five (5) years will be acceptable to this Company, and we do hereby pledge to carry out all of the obligations as set forth in our letter to you, dated June 7, 1945, particularly with reference to the matter of supplying an entire new fleet of taxicabs at the earliest possible time."

Government's Exhibit 411 consists of the ordinance extending the ordinance of December 22, 1937, to 1950 from its early date of 1945.

(Said document, so offered and received in evidence, was marked Government's Exhibit 411.)

856 Mr. Hotchkiss: The next is Government's Exhibit No. 412, consisting of a notice from Yellow, signed by Bieze, on behalf of Yellow, dated July 17, 1945.

(Said document, so offered and received in evidence, was marked Government's Exhibit 412.)

Mr. Hotchkiss: It simply notifies the Council of Yellow's acceptance of the terms of this ordinance, which is a continuation of the ordinance.

The next is Government's Exhibit 413, consisting of a letter dated July 26, 1945, from Samuels of Yellow and Chicago Yellow to Markin, with certain attachments.

857 (Said document, so offered and received in evidence, was marked Government's Exhibit 413.)

Mr. Hotchkiss: It reads, at the bottom of page 436 of the excerpts:

"In view of the agitation recently seen in the newspapers about taxicab licenses for veterans, and the suggestion which had previously been made by one of the aldermen, I thought that you would be interested in certain observations, in connection with the ordinances as they now stand.

"After reading these ordinances, you will note how important it was to have our acceptance indicate that our contract is based upon the original 1934 ordinance passed in May of that year.

"Under the 1934 ordinance Section 6 of which, I enclose in full, you will note how express the language is, with reference to the matter of issuing additional licenses, and the ordinance is very explicit that it can only be done if—'the Commission, after a hearing,
858 shall declare that public convenience and necessity requires additional taxicab service.'

"The section further is very explicit that in order to determine public convenience and necessity, 7 different factors must be considered, and these are all set out. This is the basic ordinance which was the contract as originally made."

Then proceeding to the last paragarph of that letter:

"It is perfectly clear to me, therefore, that any ordinance, if passed, which attempts to increase the number of licenses over and beyond 3,000, would be a violation of our contract with the city and if, after a public hearing, the Public Vehicle License Commissioner should determine that public convenience and necessity requires more cabs and is ready to grant more licenses, Yellow and Checker would have a right under this specific provision to obtain those licenses before any license can be granted to any other person or firm.

"I thought you would be interested in this analysis,
859 in view of the present agitation."

The next is Government's Exhibit No. 414, consisting of a letter from Markin to Samuels of Yellow, dated July 27, 1945.

(Said document, so offered and received in evidence, was marked Government's Exhibit 414.)

Mr. Hotchkiss: It says:

"Thank you for your communication of July 26th with the attached ordinance.

"In discussing the matter with the proper authorities in Chicago they have agreed that you were justified in drawing up the document as you did. Thank you very much.

The next is Government's Exhibit No. 415, consisting of a letter dated June 28, 1945 from Oakland of Checker Cab Manufacturing Corporation to Bieze of Yellow:

(Said document, so offered and received in evidence, was marked Government's Exhibit 415.)

Mr. Hotchkiss: He refers to certain negotiations with respect to taxes, and then proceeds in the second paragraph to state:

860 "One of the items in our claim is the right to reconstruct our income based on the operation of 1,000 taxicabs. The Revenue Agent who examined this Return is agreeable to reconstructing the income based on 800 taxicabs because of the order which Cab Sales placed with Checker Cab Manufacturing Corporation for 800 cabs prior to January 1, 1940. I explained to him that it was contemplated by Cab Sales that they would operate 800 Model A cabs and 200 Model Y cabs, but that due to the superiority of the Model A over the Model Y that it was impossible to get drivers to operate the Model Y cabs. The Revenue Agent referred to the agreement between Yellow and Checker and Cab Sales, wherein if the licenses were increased beyond 3,000 that Checker and Yellow would obtain these licenses and operate them on a basis of 60/40. It is the Revenue Agent's contention that inasmuch as Yellow only ordered 1,200 cabs and Cab Sales ordered 800 cabs that that was all of the cabs these companies contemplated using. I advised him that Yellow contem-
861 plated operating 395 Model Y cabs, and did in fact operate some Model Y cabs, after the 1,200 cabs were received. I also told him that it was the policy or large fleet operators to only replace a portion of their fleet when ordering new cabs and that I was sure that the records of Yellow Cab Company in Chicago would sustain this contention."

The next is Government's Exhibit 416, consisting of a letter from William W. Cloud to Samuels of Yellow, dated October 26, 1945.

Mr. Lynton: In addition to the standing objections, the defendants object to this letter because it is incompetent and particularly irrelevant. This letter, together with the next proposed exhibit, I think, has no place in this case. It contains certain statements as to which the defendants have no feeling, but it seems to me it is not the kind of thing that ought to be in this record.

The Court: Well, the court will reserve its ruling subject to being connected up.

(Said document so offered and received in evidence, was marked Government's Exhibit 416.)

Mr. Hotchkiss: Government's Exhibit 416 is a
862 letter from Cloud to Samuels of Yellow, on a letter head showing him to be resident manager of Yellow Cab of Baltimore, Maryland, and it refers to a recent meeting, and it says:

"One thing we are very much interested in as are many other operators is the subject of returning war veterans and various proposed G. I. Car Companies or veteran individual operators. So far a few of our furloughed employees and all who went into the several armed services were furloughed, are back on the job but others desire to try something else. What are you doing on this subject and how are cab operating certificates issued in Chicago? A recent hearing on the application for 25 permits filed by the De Luxe Cab Company, Inc.,"

and I will say this is not the De Luxe Cab Company which used to operate in Chicago.

"a negro outfit brought out the race question prominently. We had to initiate the opposition, got competitors to join and had one of those prolonged hearings with which you have had some past experience. In
863 due course the Commission refused the permits as they have been doing on all individual applications since the 1,000 maximum number was established. I feel the pressure however, will come later as veterans return in greater volume. We will employ all we can who are eligible, if and when new cabs are available and employee maximum requirements permit."

Government's Exhibit 417—

Mr. LYNTON: Before you pass to that, will you stipulate that Mr. Cloud was not a director, officer or employee of any of the defendant companies?

Mr. HOTCHKISS: Yes, I will stipulate to that.

Mr. LYNTON: And that his company had no stock relationship or contract relationship with any of the defendant companies?

Mr. HOTCHKISS: I will stipulate to that.

Government's Exhibit 417 is a letter from Samuels of Yellow to William W. Cloud, dated October 29, 1945, answering the letter which has just been introduced in evidence.

(Said document so offered and received in evidence, was marked Government's Exhibit 417.)

Mr. HOTCHKISS: It refers to the pleasure to
864 hearing from Mr. Cloud again, and it says:

"Answering your conclusion in regard to veterans our problem thus far has been working out fairly well due to two very favorable situations. First, an ordinance limiting the number of cabs and no chance for an increase without a hearing as to public convenience and

necessity and second, the fact that our Company and the Checker Co. are operating under a closed shop contract with the American Federation of Labor.

"In view of this situation, we convinced the Union leaders that it was their job to protect every veteran cab driver who had been in the employ of these two companies and who were still in service so that when they returned their jobs would be assured, and at the time the agitation started here there were some 1,100 men in that position. Consequently, when the agitators sought help from the City Council, they, (the agitators) were up against three hurdles; first, the limitation ordinances; second, the fact that many veterans were still
865 fighting and, under the law, were entitled to get their jobs and, in addition thereto, they had to fight Union labor. Thereupon, the Union officials took up the war and made quite an effective argument, that there was no reason why more cab drivers should be put upon the streets of Chicago while other cab drivers were still in the armed forces and who had a right to expect that their jobs were secure. This relieved our aldermen of any particular embarrassment.

"It was also fortunate that the leaders of the so-called veterans group turned out to be men who had been discharged for one reason or another by the organized companies and were not in any way the type of men who should have taken up this fight.

"Another thing which bothered them was the fact that four-fifths of all of the so-called veterans group were colored and this proved a very embarrassing situation because the veterans group were unable to answer many of the questions which the colored men were asking, such as—will we operate out of one garage;
866 what will happen if a telephone order comes in from a white patron who expects a white cab driver and finds that you have sent a colored man? Also, how many licenses of the number which you receive will be turned over to colored operators? Another embarrassment which appeared was the inability to raise enough money.

"Another feature which added to the embarrassment of the organization was that they, in their determination, began to operate so-called livery cars in violation of the law, which resulted in numerous arrests which, of course, means employment of lawyers and will, undoubtedly, result in numerous fines. It is a

serious situation, however, because neither Yellow nor Checker in Chicago have sufficient equipment to meet the demands of the traveling public and will not be able to meet those demands until new fleets are obtainable. Consequently, we are not in a very good position to insist too strongly on the limitation of these illegal operations in order to avoid unnecessary complaints from people who need cab service.

867 "In conclusion I merely wish to emphasize that the most important factor in our present situation has been the insistence and attitude of the Union in its determination to protect the rights of their own veterans still to return. We ran quite an extensive advertisement setting out our point of view and I take pleasure in enclosing copy of same because we believe it was very effective in supporting our City Council aldermen in taking a stand that until a survey could indicate that when normal conditions are reestablished in Chicago, more cabs will be needed than the 3,000 covered by our limitation ordinance. With that in mind, the city traffic engineer is making a survey now as to conditions so that, in three or four months, he will be in position to indicate whether there is a greater or lesser demand for cab service and thus have a basis for comparison. Already the city traffic engineer has rendered a preliminary report which indicates that whereas prior to V-J Day it was impossible to see or hire a cab on any cab stand in Chicago, since that

868 time there is considerable evidence of cabs standing on the various cab stands during certain portions of the day.

"In addition thereto, we submitted evidence to indicate that whereas it was practically impossible before V-J Day to fill telephone orders in the outlying sections of Chicago, since that time we are definitely filling many more telephone calls, thus indicating that our so-called Loop railroad and hotel business must necessarily be less, which results in freeing cabs for service in outlying sections.

"I hope this gives you a fairly comprehensive answer to your questions but if there is anything additional that you require, please contact me.

"I am sending you this letter in duplicate so that if you should care to send one to your competitor, in order to solicit his active cooperation, you may do so without additional trouble."

The next is Government's Exhibit No. 418, consisting of a letter from Dudley, Duvall & Dudley law offices to Yellow.

Mr. LYNTON: Will you identify Messrs. Dudley,
869 Duvall & Dudley?

Mr. HOTCHKISS: Beyond the fact that the letterhead is apparently that of law offices of a firm of that name, we will not identify it further.

Mr. LYNTON: You don't suggest that that law firm had any relation to any of the defendants in this case, do you?

Mr. HOTCHKISS: We will let the letter stand on its own feet.

Mr. LYNTON: I object to this, being incompetent, and in addition to that, of course, being irrelevant and immaterial.

The COURT: The court will reserve its ruling.

(Said document, so offered and received in evidence, was marked Government's Exhibit 418.)

Mr. HOTCHKISS: The letter from Dudley, Duvall & Dudley to Yellow reads as follows:

"The Yellow Cab Transit Company is an Oklahoma corporation, engaged in the motor freight transportation business as a common carrier under the authority of the Interstate Commerce Commission.

"It operates in Illinois, and through and out of Chicago, and it has a terminal in Chicago. It operates in Oklahoma, Texas, Kansas, Missouri, Kentucky, In-
870 diana and Illinois, and is authorized to do business as a foreign corporation in all of these States except Illinois, and, of course, its principal place of business is in Oklahoma City.

"We recently had up with the Secretary of State of Illinois an application for permit to do business in Illinois as a foreign corporation. The Secretary takes the position that he can not issue a permit without a written consent from you, and has suggested that we take this matter up with you.

"We are preparing an application to change the corporate name from Yellow Cab Transit Company to Yellow Transit Company, and we would be pleased to have you advise us your attitude with reference to the consent, assuming that the name is changed as above indicated. Stamped envelope is enclosed for reply."

871 Mr. LYNTON: Will you stipulate that Yellow Cab Transit Company, referred to in Government's Exhibit 418, had no stock or contract relationship with any of the defendants?

Mr. HOTCHKISS: Yes.

I offer Government's Exhibit 419, consisting of a letter dated December 14, 1942, from Samuels to J. B. Dudley, the same address as shown on the letterhead in the previous exhibit.

Mr. Lynch: In addition to the standing objections, the defendant Yellow objects on the basis that this is irrelevant to the issues in this case. I may say this is perfectly clear, that this is purely a question of the use of a name in a state where there is already one incorporated name. There is no relationship whatsoever to anything else.

The Court: The court will reserve its ruling until the conclusion of the government's evidence. If not connected up and made material and relevant, it will be excluded.

(Said document, so offered and received in evidence, was marked Government's Exhibit 419.)

Mr. Hoffiss: Government's Exhibit 419 reads:

872 "Your letter of December 10th, in reference to the matter of our consent for your corporation to be licensed in the State of Illinois, received.

"In answer thereto, if you will draw a special agreement that Yellow Transit Company, which is to be the name of your company, is engaged only in the matter of transporting motor freight incidental to its business transacted in the other states mentioned in your letter and has never been engaged in the taxicab business or in the parcel delivery business in the State of Illinois and does not intend to engage in any such business in the State of Illinois and particularly will not, under any circumstances, engage in the taxicab business or the parcel delivery business within the entire County of Cook and State of Illinois at any time so that this company may be properly protected, and if you will expressly recite in the document the type of vehicle which you are using so that we may be assured that the vehicle under no circumstances might be con-

873 verted into a vehicle for the transportation of passengers for hire or for parcel delivery, then I am inclined to advise our people to execute a contract whereby we do assent to your licensing in the State of Illinois.

"We wish, of course, to be absolutely sure and certain that you do not enter a competitive field and, furthermore, we would like for our files a picture showing the color scheme of the vehicles which you are using for standard equipment so that we may know

that there is absolutely no attempt at duplicating the type of equipment which we have been using for many years."

Next I offer Government's Exhibit 420, appearing at page 442 of the excerpts.

(Said document, so offered and received in evidence, was marked Government's Exhibit 420.)

Mr. Hotchkiss: Government's Exhibit 420 was taken from the Journal of the Proceedings of the City Council of the City of Chicago, Illinois, Regular Meeting, Friday, December 28, 1945. Toward the bottom of page 442 I read:

"Be It Resolved, That all of the taxicab
874 licensees be required to put into service at once all taxicabs licensed pursuant to ordinance, and the Public Vehicle License Commissioner hereby is authorized and directed to enforce the provisions of the taxicab ordinance to compel full operation of 3,000 taxicabs in the city of Chicago, and unless the licensees provide said 3,000 taxicabs on or before January 15, 1946 the Public Vehicle License Commissioner is authorized and directed to take all steps that are necessary for the licensing of additional taxicabs in the city of Chicago."

Next I offer Government's Exhibit 421, Journal of the Proceedings of the City Council of the City of Chicago, Illinois, Regular Meeting, Wednesday, January 16, 1946.

(Said document, so offered and received in evidence, was marked Government's Exhibit 421.)

Mr. Hotchkiss: Exhibit 421 consists of authorization and direction for issuance of 250 permits for operation of taxicabs:

"The following is said order as passed:
875 "Ordered, That the Public Vehicle License Commissioner be and he is hereby authorized and directed to issue 250 permits for the operation of taxicabs, and that ex-servicemen be given preference in the issuance of such permits; such permits to be issued only to individuals, and to be distributed generally throughout the city."

The next deals with suit by Yellow and Checker to enjoin cancellation of certain of their licenses and to enjoin issuance of licenses to others, and the outcome of the suit.

Mr. Lynton: Before you pass further, will you stipulate that the resolution contained in Exhibit 421 was declared invalid by the Circuit Court of Cook County, and that it

opinion was affirmed by the Illinois Supreme Court, and that the corporation counsel of Chicago wrote an opinion stating that in his opinion that particular resolution was invalid?

Mr. Hotchkiss: I think it will not be necessary to stipulate to that, because the documentary evidence will be offered which will cover at least some of those—

The Court: If those are the facts, I see no reason to discuss it further.

Mr. Hotchkiss: I offer Government's Exhibit 422.

876 (Said document, so offered and received in evidence, was marked Government's Exhibit 422.)

Mr. Hotchkiss: Government's Exhibit 422 is the opinion of the Circuit Court of Cook County, holding this ordinance to be improper and holding that the ordinance of 1934 is a contract between the city and the licensees. It discusses the facts of the case, the fact that Yellow Cab and Checker are the complainants seeking to enjoin the City of Chicago from issuing permits or licenses in the operation of taxicabs, and from cancelling 234 taxicab licenses which had previously been issued to the complainant Yellow and 87 which had previously been issued to Checker.

The opinion recites certain resolutions.

It recites then that on January 22, 1946 the Commissioner had addressed a letter to the complainants advising him that his office had surveyed the records of taxicabs and operations, and directed that, as to Yellow, 237 cabs, and as to Checker, 87 cabs, listed in the letter, which had not been operated, be placed in operation within five days from the date, or the licenses for those cabs would be cancelled.

877 Then, on the bottom of page 444, it states:

"It is argued by counsel for the defendants that since it appears from the evidence that the Yellow Cab Company has not operated two hundred thirty-four (234) of the cabs shown in the list submitted by the Commissioner in his letter of January 22, 1946, and the Checker Company has not operated eighty-seven (87) of its cabs, therefore it lies in the power of the Commissioner under the resolution of the Council, December 28, 1945, to revoke the licenses as to such taxicabs and issue permits as provided in the order of the City Council dated January 16, 1946."

The the court refers to the allegations of the complaint, the evidence that it was impossible for the complainants to procure new taxicabs because of the war time situation.

Mr. LYNTON: May I request that the court take judicial notice, that on January 22, 1947 the Supreme Court of Illinois affirmed the decision of Judge Feinberg, which was rendered February 5, 1946, and that the opinion of
878 the Illinois Supreme Court by Mr. Justice Fulton was contained in the report, "Yellow Cab Company vs. City of Chicago, 396 Ill. 388"?

Mr. HOTCHKISS: The Government will stipulate on that.

Mr. LYNTON: May I further request that the court take judicial notice of the opinion of the Corporation Counsel of the City of Chicago dated September 11, 1945, which is referred to in Judge Feinberg's opinion?

The COURT: Was that prior to Judge Feinberg's opinion?

Mr. LYNTON: Yes, sir.

Mr. HOTCHKISS: You are offering that opinion?

Mr. LYNTON: I have asked that the court take judicial notice of it and, for the convenience of the court—

The COURT: If counsel stipulates, that will simplify matters.

Mr. HOTCHKISS: We will stipulate.

The COURT: If that is the fact.

Mr. HOTCHKISS: Yes.

Mr. LYNTON: Exactly. And at a convenient interlude in this case, may we, for the court's own convenience,
879 submit copies of the opinion of the Corporation Counsel and of the Illinois Supreme Court?

The COURT: You may.

Mr. HOTCHKISS: At this point Mr. Williams will proceed with the offering of evidence.

The COURT: I have a meeting I have to attend this noon, so I think we will have to recess at this point until 2 o'clock.

(Thereupon the further trial of the above-entitled case was recessed until 2 o'clock p. m. of the same day, Tuesday, June 1, 1948.)

880 No. 46 C 1339.

UNITED STATES OF AMERICA, PLAINTIFF,

vs.

YELLOW CAB COMPANY, *et al.*, DEFENDANTS.

Before Judge LaBuy

Tuesday, June 1, 1948,
2:00 o'clock p. m.

Court met pursuant to recess.

Present:

Mr. Hotchkiss
Mr. Williams
Mr. Lynton
Mr. Ginsberg
Mr. Fuller
Mr. Climenko

THE COURT: Proceed, please.

Mr. WILLIAMS: We have some stipulations to dispose of here.

One is that if Exhibit 400 were brought down to date, it would show there had been no change in the situation of Yellow and Checker, and the same figures would be shown in the years 1946, 1947 and 1948. That is the exhibit that lists the number of taxicabs licensed in the City of Chicago by Yellow, by Checker and by independents
881 for each year.

It is also stipulated that the fees charged taxicab operators during the years 1929 to May 18, 1934, in the City of Chicago was $500 for a stand license, and $2.50 semi-annually for meter inspection.

I might mention at this point that a prior exhibit, prior to 1934 ordinance shows that the fees of $12.50 quarter-annually were charged for the use of the streets.

It is stipulated on January 1, 1944, an ordinance was passed by the City Council of the City of Chicago—

THE COURT: What is that, $50 per year?

Mr. WILLIAMS: That is right, $12.50 quarterly.

In January of 1944, an ordinance was passed by the City Council whereby 10 percent was added to all of those fees I have mentioned, and since that time this 10 percent fee has been charged.

I wish to offer some exhibits that are not summarized in our book.

Will you mark as Government's Exhibit 474 a letter dated January 22, 1946, from the Public Vehicle License
882 Commissioner of the City of Chicago to Yellow Cab Company, registered mail return receipt is attached and made a part of the exhibit.

(Said document marked Government's Exhibit 474.)

Mr. LYNTON: In connection with this last exhibit, may it be noted that all the standing objections still apply, and in addition to that, may it be stipulated between counsel that this letter of January 22, 1946, addressed to Yellow Cab Company, was part of the record in the action commenced in the State Court, and in which Judge Feinberg rendered a decision for the Circuit Court of Cook County, and in which the Illinois Supreme Court affirmed Judge Feinberg's decision.

Mr. WILLIAMS: It is so stipulated.

I will get all these marked, and then offer them.

Mr. LYNTON: Do you have another one like this one?

Mr. WILLIAMS: Let me get the next one. I ask to have marked Government's Exhibit 475 the reply of Yellow Cab to Government's Exhibit 474.

(Said document was marked Government's Exhibit 475.)

Mr. LYNTON: Do you offer that?

883 Mr. WILLIAMS: Not yet. I will offer them all when I am through.

I will ask that a letter to Checker Taxi Company—it is typed Checker Cab Company—dated January 2, 1946, from the Public Vehicle Commissioner, and the attached registered mail receipt be marked Government's Exhibit 476.

(Said document marked Government's Exhibit 476.)

Mr. LYNTON: So that the record may be clear, these markings at this time are merely for identification, is that correct?

Mr. WILLIAMS: That is correct. I will offer them all as soon as they are marked.

I will ask that a letter which is the reply by Checker Taxi Company to Government's Exhibit 476, which is dated January 24, 1946, be marked Government's Exhibit 477.

(Said document marked Government's Exhibit 477.)

Mr. WILLIAMS: I ask that the Council proceedings of February 28, 1946, in relation to taxicabs be marked Government's Exhibit 478.

(Said document marked Government's Exhibit 478.)

884 Mr. WILLIAMS: I ask that the Council Proceedings of February 6, 1948, relating to taxicabs, be marked Government's Exhibit 479.

(Said document marked Government's Exhibit 479.)

Mr. WILLIAMS: I ask that the Council Proceedings with respect to taxicabs, dated March 1, 1948, be marked Government's Exhibit 480.

(Said document marked Government's Exhibit 480.)

Mr. WILLIAMS: Then will you mark a letter dated April 10, 1946, from the Department of Licenses, Weights and Measures, in the City of Minneapolis, to the Department of Justice, as Exhibit 481.

(Said document marked Government's Exhibit 481.)

Mr. WILLIAMS: I offer Government's Exhibit 474 in evidence. This is a letter to Yellow Cab Company dated January 22, 1946.

Mr. LYNTON: I have already made the objections and you made the stipulation with respect to that.

(Said document, so offered and received in evidence, was marked Government's Exhibit 474.)

885 Mr. WILLIAMS: This letter refers to a resolution of the Council dated December 28, 1945, authorizing the issuance of 250 licenses. The last paragraph on the first page reads:

"Subsequent to the date of this resolution, this office, consistent with the action outlined by the City Council, made an exhaustive survey of the facts of the record relative to the operation of cabs, and it was found that the following numbered cabs had not been operated within a reasonable time".

Then follows a list of the licensed cabs. The final paragraph:

"In compliance with the resolution as passed by the City Council of the City of Chicago, December 28, 1946, as recited in full above, you are hereby notified that if the above numbered cabs are not in operation within five days from the date of this notice, said licenses will be canceled and issued to others as provided by the resolution."

I offer Government's Exhibit 475 in evidence, which is the reply of Yellow Cab to Government's Exhibit 474.

886 Mr. LYNTON: The same standing objections are continued, and in addition to that, a stipulation is requested that this document, Government's Exhibit 475, was part of the record before the State Court in the action mentioned.

Mr. WILLIAMS: I so stipulate, if you say it is a fact. I have no knowledge.

(Said document, so offered and received in evidence, was marked Government's Exhibit 475.)

Mr. LYNTON: Do you want to read any portion of that?

Mr. WILLIAMS: No. You may read any part you wish.

Mr. LYNTON: I will read a part of the sentence, just to preserve the continuity. It is stated in this letter that the condition of these taxicabs is due to the war and strikes and other causes, all of which are beyond our control.

With respect to that particular sentence, may I also ask the Government for a stipulation that the State Court held in the mentioned action that those cabs which were not operated were not operated because of causes beyond the control of those companies?

887 Mr. WILLIAMS: I believe the opinion is in evidence. I would rather rely on the opinion.

Mr. LYNTON: All right.

Mr. WILLIAMS: I offer Government's Exhibit 476 in evidence, which is a similar letter from the Commissioner addressed to the Checker Taxi Company.

Mr. LYNTON: I continue the standing objections, and make a similar request for a stipulation concerning the incorporation of this letter into the record of the State Court action.

Mr. WILLIAMS: I so stipulate.

(Said document, so offered and received in evidence, was marked Government's Exhibit 476.)

Mr. WILLIAMS: This letter refers to 87 cabs that are not being operated, and states that the licenses will be canceled unless they are placed in operation within five days from the notice.

I offer as Government's Exhibit 477 the reply of the Checker Taxi Company.

Mr. LYNTON: Again I make the same standing objections, and make a request for the same stipulation.

Mr. WILLIAMS: I have no knowledge. If you state it is a fact, I will stipulate it.

888 Mr. LYNTON: I will state as before.

Mr. WILLIAMS: I do not believe it is necessary to offer that.

I offer Government's Exhibit 478, which is the Council Proceedings of February 28, 1946.

(Said document, so offered and received in evidence, was marked Government's Exhibit 478.)

Mr. WILLIAMS: This is an ordinance to issue 275 permits. I ask for a stipulation that those permits were issued.

Mr. LYNTON: I will stipulate that factually the purported permits were issued, but that those purported terms were found invalid in the mentioned State Court action.

Mr. WILLIAMS: I notice the ordinance refers to them as licenses instead of permits. Anyway, it refers to these 275 permits.

Is that correct?

Mr. LYNTON: That is correct.

Mr. WILLIAMS: I offer Government's Exhibit 479 in evidence, which is the ordinance of February 6, 1948. That is the ordinance that authorizes 950 licenses.

889 (Said document, so offered and received in evidence, was marked Government's Exhibit 479.)

Mr. WILLIAMS: I ask for a stipulation that those licenses have been issued.

Mr. LYNTON: I will stipulate that those licenses have been issued without making any concession whatsoever as to their validity.

Mr. WILLIAMS: I offer Government's Exhibit 480 in evidence, which is the Council ordinance of March 1, 1948, which pertains to the examination of the preceding exhibit.

Any objection?

Mr. LYNTON: There is no objection offered as to the text, subject to correction, although, of course, the standing objections continue as to this, as to the last exhibit.

(Said document, so offered and received in evidence, was marked Government's Exhibit 480.)

By Mr. WILLIAMS: I offer Government's Exhibit 481 in evidence. This is a letter which states the total number of taxicab licenses outstanding in the City of Minneapolis, and the number issued to the Yellow Cab Company for the years 1931 to 1946.

Mr. LYNTON: There is no objection to the facts
890 stated, but the objection is continued as to the competency, relevancy and materiality in accordance with the standing objection.

(Said document, so offered and received in evidence, was marked Government's Exhibit 481.)

891 Mr. WILLIAMS: Now, I will get back to the excerpts, and the documents. I offer as Government's Exhibit 423 an agreement between the Parmelee Company and Transportation Management Corporation dated January 1, 1934:

(Said document, so offered and received in evidence, was marked Government's Exhibit 423.)

Mr. WILLIAMS: This agreement shows the management contract was entered into between the Transportation Management Company and the Parmelee Company, which the evidence has shown was the predecessor of Parmelee in the business of transporting railroad passengers between stations.

I offer as Government's Exhibit 424 a letter dated May 12, 1937 from C. J. Condon to Oakland.

(Said document, so offered and received in evidence, was marked Government's Exhibit 424.)

Mr. WILLIAMS: It reads:

"Pursuant to our telephone conversation, we enclose our order #3022 for 43 coaches of the nine-passenger model 'Y' type.

892 "It is of the greatest importance that this equipment be delivered to us at the earliest possible moment. In the first place, in order that we may be able to reap full benefit in connection with the heavy summer travel and secondly, we are being pounded constantly by the highest Passenger officials of nearly all of the railroads, as well as Vice Presidents of the Operating Departments. Incidentally, Mr. Williamson, President of the New York Central System is keeping an eagle eye on our operations and dislikes for us to use our older type of equipment any longer, all of which, I am sure, you will appreciate, is causing us considerable anxiety and in fact, we have told many of the Passenger officials that our fleet of equipment would be augmented with new cars to a great extent during the summer."

I will omit the rest of that exhibit.

I offer as Government's Exhibit 425 a letter of March 29, 1940 from Rank of Parmelee to Bieze of Yellow.

(Said document, so offered and received in evi-

893 dence, was marked Government's Exhibit 425.)

Mr. WILLIAMS: It reads:

"On those occasions where Parmelee uses taxicabs for the transportation of its transfer passengers it should be filled at the meter rate for such services. It seems there has been some slight misunderstanding about this in your office and I would thank you to issue the necessary instructions promptly on your return."

I offer as Government's Exhibit 426 Plaintiff's Interrogatory No. 3, directed to Parmelee.

(Said document, so offered and received in evidence, was marked Government's Exhibit 426.)

Mr. WILLIAMS: I will not read that interrogatory.

I offer as Government's Exhibit 427, Parmelee's answer to Exhibit 426.

(Said document, so offered and received in evidence, was marked Government's Exhibit 427.)

Mr. WILLIAMS: The answer is:

"(a) The number of railroad passengers transported by you between railroad stations in Chicago by Parmelee Transportation Company during each calendar year from 1940 to 1946, inclusive, was as follows."

894

The figures show that for the years 1940 to 1946—for the first ten months of 1940, there were 695,000, and in 1946, it was 2,600,000. The figure was reached, during the war, in 1944, of about four million.

(b) of the exhibit reads:

"The number of pieces of checked baggage, transported by Parmelee Transportation Company between railroad stations in Chicago during each calendar year from 1940 to 1946, inclusive, was as follows."

Then the figures show in 1946 there were 1,600,000 pieces of baggage.

I offer Government's Exhibit 428, Interrogatory No. 7, directed to Parmelee.

(Said document, so offered and received in evidence, was marked Government's Exxhibit 428.)

Mr. WILLIAMS: It reads:

"With respect to your denial of the allegations of paragraph 14 of the amended complaint that you operate 85 non-licensed cabs in transferring passengers between railroad stations in Chicago, state:

895

"(a) The number of motor vehicles used by you on or about August 29, 1947, respectively, in transferring passengers between railroad stations in Chicago:

"(b) The number of such vehicles that were licensed as cabs by the City of Chicago."

I offer as Government's Exhibit 429 Parmelee's answer to Government's Exhibit 428.

(Said document, so offered and received in evidence, was marked Government's Exhibit 429.)

Mr. WILLIAMS: The answer reads:

"(a) The number of motor vehicles used by Parmelee Transportation Company on or about August 29, 1947 in transferring passengers between railroad stations in Chicago was 85.

"(b) None of such motor vehicles was licensed as a cab by the City of Chicago."

Mr. LYNTON: At this point, will the government
896 stipulate with respect to Government's Exhibits 425 and 429 that Parmelee never used, as a part of its vehicles, any public cabs, and that the reference to the use of taxicabs was merely a reference to hiring, as a member of the public, public taxicabs to the Englewood Station?

Mr. WILLIAMS: I am afraid we cannot stipulate on that. We would like to have the evidence on that so that we can cross examine.

I offer as Government's Exhibit 430 a letter from W. A. Schoeder, General Traffic Manager of Parmelee, to C.P.G. Fuller, dated October 16, 1939.

Mr. LYNTON: In addition to all standing objections, the objection is made on the basis of attorney-client privilege.

The COURT: The record may show the objection.

(Said document, so offered and received in evidence, was marked Government's Exhibit 430.)

Mr. WILLIAMS: This letter states the various routes taken by Parmelee coaches in transferring passengers between railroad stations.

I offer as Government's Exhibit 431 a letter from C. L. Passolt of Parmelee to the Director of Selective Service, dated March 3, 1944.

897 (Said document, so offered and received in evidence, was marked Government's Exhibit 431.)

Mr. WILLIAMS: This letter states:

"We operate the only passenger and baggage transportation service between the various railroad stations in the City of Chicago as an interline carrier as defined in the Interstate Commerce Act. We are currently transferring 350,000 passenger and 275,000 pieces of baggage per month. Attention is called to the fact that approximately 80% of this business represents troop movements and other necessary military transportation. The Parmelee Transportation service was founded in 1853 for that purpose, and has been in continuous operation since that time, and is recognized by the railroads and general public as a necessary and important link in inter-railroad transportation in Chicago.

"Our personnel, at the present time, is approximately the same as in 1941, whereas our business has increased approximately 400%."

I will skip the rest of that exhibit.

I offer as Government's Exhibit 432 a letter from C. L. Passolt of Parmelee to the War Manpower Commission, dated August 1, 1944.

(Said document, so offered and received in evidence, was marked Government's Exhibit 432.)

Mr. WILLIAMS: I call attention to the first complete paragraph on the top of page 451:

"The transfer of passengers and baggage between railroad stations in Chicago represents 36% of our total business and attention is called to the fact, that approximately 80% of this represents troop movements or other necessary military transportation."

I offer as Government's Exhibit 433 a letter from Passolt to Markin with attachment consisting of draft of letter dated August 23, 1944.

(Said document, so offered and received in evidence, was marked Government's Exhibit 433.)

Mr. WILLIAMS: The exhibit reads:

"As per your request, we are enclosing herewith draft of a letter and an attachment for your approval or revision before sending same to the ODT."

Then I wish to skip two paragraphs:

"286 trains at present enter and 284 trains depart from the City of Chicago at the 8 different passenger terminals. No through railroad passenger cars are operated through the City of Chicago, and therefore anyone making a trip via Chicago must be transported from one railroad terminal to the other, depending upon his destination. Regular time schedules in accordance with train arrivals must be met and regular routes must be followed in order to assure connections with out-going trains.

* * *

"As we have already taken advantage of every possible means of mileage reduction through more efficient operation, any curtailment in mileage would mean a reduction in passengers transported. It should be remembered that all of these passengers have previously paid for this transportation in their purchase of the railroad ticket, and, therefore can not be asked to find some other means of transportation which would guarantee them proper train connections."

I offer as Government's Exhibit 434 a letter dated February 21, 1944, from A. B. Chown and H. W. Siddall to C. L. Passolt of Parmelee.

901 Mr. LYNTON: In addition to the standing objections, the objection is made on the basis this document is incompetent. It does not purport to come from anybody connected with the defendants. Quite the contrary, it comes from a railroad association.

The COURT: The Court's ruling is the same on all these. (Said document, so offered and received in evidence, was marked Government's Exhibit 434.)

Mr. WILLIAMS: I will skip the first four paragraphs—if there is objection, I believe I will omit reading this letter for the time being.

Mr. LYNTON: Are you withdrawing the exhibit, or just not reading it?

Mr. WILLIAMS: I am not reading it.

I offer as Government's Exhibit 435 a letter from Parmelee to Director of Office of Price Administration, dated September, 1942.

(Said document, so offered and received in evidence, was marked Government's Exhibit 435.)

Mr. WILLIAMS: I will skip the first few sentences.

902 "Pursuant to these orders we carry two classes of passengers: (a) passengers who pay a standard cash fare and (b) passengers who are traveling on coupons issued by the various railroad companies with which we have contractual arrangements, as part of the through railroad tickets purchased by such passengers for their interstate journeys. In the case of these passengers the transportation charge is paid by the railroads and we serve as a continuation of the railroad journey of each passenger.

". . . the general public avail themselves of our transportation service either through the payment of a standard fare or through the purchase of railroad tickets which entitle them to a coupon permitting them to use our service. Every member of the general public is therefore entitled to use our service."

I offer as Government's Exhibit 436 a letter from Markin to Passolt, dated January 12, 1943.

(Said document, so offered and received in evi-
903 dence, was marked Government's Exhibit 436.)

Mr. WILLIAMS: This letter states:

"I am transmitting herewith agreement in connection with the LaSalle Street Station which was signed by Mr. Crowley."

I offer as Government's Exhibit 437 letter from the New York Central Railroad and Chicago, Rock Island & Pacific Railroad to Markin. The letter is dated December 30, 1942.

Mr. LYNTON: I make the same objection on the basis of competency as was made with respect to Government's Exhibit 434, a railroad association letter, as well as all standing objections.

Mr. WILLIAMS: I will withdraw this offer at this time.

I offer as Government's Exhibit 438, agreement between Parmelee and the New York, Chicago & St. Louis Railroad Company.

(Said document, so offered and received in evidence, was marked Government's Exhibit 438.)

Mr. WILLIAMS: I will omit the WHEREASES, and begin on page 455:

"FIRST: Nickel Plate agrees to carry, free of
904 charge, upon its passenger trains, the agents and employees of Parmelee Company, when on duty and in appropriate uniform, between said station and Englewood, and to allow them to come and be upon its premises in so far as may be necessary for the sole purpose of transacting the business of Parmelee Company, as herein set forth. Such agents and employees of Parmelee Company shall, when on the trains or premises of Nickel Plate, be subject to the orders of the Superintendent of Nickel Plate, who may determine the number of such agents and employees, upon what trains they shall be carried, and may make regulations governing the said service upon its said trains and premises; and Parmelee Company agrees that it will promptly remove therefrom any of its said agents or employees whenever personally objectionable to said Superintendent, upon written request of said Superintendent.

"SECOND: Nickel Plate agrees that it will not grant any right or privilege to transact similar business on any of its trains entering the City of Chicago or upon its premises, to any person, firm or cor-
905 poration other than Parmelee Company during the life of this agreement; and that it will, for the like period, refuse to permit, so far as it may lawfully do so, the transaction of any such business on any of its trains or on its premises, by any person, firm or corporation other than Parmelee Company; and that it

will, for the like period, in so far as it may lawfully do so, refuse to sell tickets or permit them to be sold over its line, routing passengers for such transportation in or through the City of Chicago by any other person, firm or corporation than Parmelee Company.

"Third: Nickel Plate further agrees that it will not redeem, pay or account for any used ticket coupon or similar document, providing to the purchaser the right of transportation by means of the vehicles of Parmelee Company, from or to any person, firm or corporation other than Parmelee Company, and that it will account and pay to Parmelee Company, for the transfer from the station of any railroad company or from the dock of any steamboat line entering
906 said City of Chicago to said LaSalle Street Station of any passenger holding transportation originating on any of said lines entitling him to transportation beyond said City of Chicago on the line of Nickel Plate or its connections, or for baggage originating on any of said lines checked through to points beyond said city on the line of Nickel Plate or its connections, the following sums, to-wit: Seventy-five cents (75¢) for the transfer of each adult passenger holding full-fare transportation; and Thirty-eight cents (38¢) for the transfer of each child holding half-fare transportation, together with baggage for which through checks over the lines of Nickel Plate are held, payment to be made by voucher upon receipt of statement with transfer coupons or checks attached, or with other satisfactory evidence that such transfer service has been performed."

I will skip the rest of that exhibit.

Mr. Lynton: Before you pass that exhibit, may I read the portion which is not in the excerpt book?

Mr. Williams: Certainly.

907 Mr. Lynton: Paragraph 8:

"This agreement shall take effect upon the date as hereinbefore written, and shall continue in force and effect for the period of one year, and thereafter until the expiration of sixty days after written notice shall have been given by either party hereto to the other party hereto of its desire to terminate the same."

Then follows some language which I do not propose to read, unless you wish to read it.

Mr. Williams: No.

I offer as Government's Exhibit 439 a letter dated February 5, 1942, from Wyatt of Parmelee to Crowley of Parmelee.

(Said document, so offered and received in evidence, was marked Government's Exhibit 439.)

Mr. WILLIAMS: It reads:

"I quote from a letter signed by Chairmen of the Central Passenger Association and the Western Passenger Association and dated January 21, 1942:

"'Effective with the date of the increase in passen-
908 ger fares, the Parmelee transfer charge in Chicago be increased from .75¢ to .85¢ per capita.'

"In view of the fact that the railroads are putting their fare increase into effect February 10th, 1942, it will be in order, on all coupons collected after Midnight of February 9th, to bill the railroads at the higher rate.

"I should appreciate being advised of any rate changes made by express and baggage companies operating in Chicago in the transferring of baggage etc."

I offer as Government's Exhibit 440 a memorandum from Landman to Wyatt, with attachments. The memorandum was dated November 25th, 1942.

(Said document, so offered and received in evidence, was marked Government's Exhibit 440.)

909 Mr. WILLIAMS: It reads:

"Enclosing copy of my letter to the Chairman of the Central and Western Passenger Associations concerning agreement we have with the Terminal Lines of Chicago as to the settlement for baggage of military personnel transferred by our Company where passengers find their own way between stations.

"Will you please notify our auditors in Chicago to bill the railroads on the basis outlined therein."

Then one of the attachments is a letter from Landman to Beggs dated November 25, 1942:

"Your advice of November 21, that the offer of the Parmelee Company is accepted, to transfer baggage for military personnel at the rate of fifty cents (50¢) per individual, where the men are handled through Chicago in through cars."

Then I will read the first full paragraph on page 458:

"The Parmelee Company believes that their overall charge of 85¢ per passenger and baggage is a

910 minimum, just and reasonable charge considering all factors involved in the transfer service in Chicago, and that is true regardless of whether, in some cases, only the passenger is transferred, and in other cases, only the baggage is transferred, although in a large number of cases both baggage and passenger are transferred."

I offer as Government's Exhibit 441 a letter from Fuller to Rank dated February 3, 1939.

Mr. LYNCH: In addition to the standing objections which still continue, objection is made on the ground that this is a privileged document.

The COURT: The same ruling.

(Said document, so offered and received in evidence, was marked Government's Exhibit 441.)

Mr. WILLIAMS: It reads:

"An order has been issued by the Interstate Commerce Commission, Bureau of Motor Vehicles, on February 1, 1939, that Parmelee is not subject to the provisions of the Motor Carrier Act of 1935, and that Parmelee has 30 days to show cause why its application for a certificate should not be dismissed.

911 "You will recall that one of the reasons we made application without prejudice to our right to claim exemption from the provisions of the Act was to give us some semblance of a franchise to handle the baggage transfer business with the railroads in Chicago, thereby precluding competition in that field. I do not know whether it is your opinion, that every effort should be made to make that part of Parmelee's operations come within the purview of the Act in order to preclude competition from arising in that particular sphere. Of course, no competition has arisen in the last ten years, and the possibilities of competition might be considered by the Board of Directors to be remote. Furthermore, I am not at all sure that we can establish the Company under the Act."

I might call the court's attention, the letter is dated 1939, and going back ten years takes us back to 1929 when the alleged conspiracy began.

I offer as Government's Exhibit 442 a letter from Rank, President of Parmelee, to Fuller, dated February 8, 1939.

Mr. LYNCH: In addition to the standing objection,

912 objection is made on the ground this is a privileged document.

The Court: The same ruling.

(Said document so offered and received in evidence, was marked Government's Exhibit 442.)

Mr. Williams: Do you make the same objection with reference to Government's Exhibit 443?

Mr. Lynton: Yes.

Mr. Williams: I offer that exhibit, which is a memorandum from Fuller for Directors of Parmelee, dated September 15, 1944.

Mr. Lynton: Which are you offering, both of them?

Mr. Williams: I am offering both right now.

Mr. Lynton: The same objection is made with reference to both, including the objection on the basis of privilege.

The Court: Objection overruled.

(Said document, so offered and received in evidence, was marked Government's Exhibit 443.)

Mr. Williams: Government's Exhibit 442 read:

"We have your letter of February 3rd informing
913 us that an order has been issued by the Interstate Commerce Commission, Bureau of Motor Vehicles, on February 1, 1939, that Parmelee is not subject to the provisions of the Motor Carrier Act of 1935, and that Parmelee has 30 days to show cause why its application for a certificate should not be dismissed.

"It is our understanding that this order applies to the Passenger and Baggage Transfer business which we conduct in the City of Chicago. In this connection, we wish to inform you that we have elected to discontinue any further efforts to secure a certificate under the Motor Carrier Act of 1935, and to accept as final the order issued by the Interstate Commerce Commission, Bureau of Motor Vehicles, that Parmelee Transportation Company is not subject to the provisions of that Act."

Government's Exhibit 443 reads:

"When the Motor Carrier Act of 1935 was passed, it provided that those motor carriers who were in operation prior to the passage of the Act were entitled as a matter of right to a Certificate of Public
914 Convenience and Necessity, both as contract and as common carriers, authorizing them to continue their operations without interference from the Interstate Commerce Commission or competitors or newly organized motor carriers, provided they came under the jurisdiction of I.C.C.

"At that time the then management of Parmelee Transportation Company concluded to make an application for a Certificate of Public Convenience and Necessity, reserving in such application the right to claim that the Act did not apply to them.

"This decision was motivated by the following factors:"

I will skip (a) and (b).

(c) reads:

"The issuance of the certificate applied for would prevent any competitor or newly organized concern from taking over the transfer business in Chicago."

I will skip (d) and (e).

I offer as Government's Exhibit 444 Interrogatory No. 28 directed to Yellow, Cab Sales and Checker.

915 (Said document, so offered and received in evidence, was marked Government's Exhibit 444.)

Mr. WILLIAMS: The interrogatory says:

"State whether you have at any time since January 1, 1929 approached any representative of any railroad with a terminal in the City of Chicago or any representative of a railroad terminal association in an attempt to enter into an understanding with such railroad or railroad terminal association by which you would carry railroad passengers between railroad stations in the City of Chicago. If you have so approached any such representatives, state:

"(a) The name of each railroad and railroad terminal association approached;

"(b) The name of each representative thereof who was approached;

"(c) When he was approached by you;

"(d) The name of your representative who made the approach."

Yellow's answer to that interrogatory, I offer as Government's Exhibit 445. I offer Government's Ex-
916 hibit 446, Cab Sales' answer, and Checker's answer as Government's Exhibit 447.

(Said documents, so offered and received in evidence, were marked Government's Exhibits 445, 446 and 447.)

Mr. WILLIAMS: On all occasions, each one of these companies said one word, "Answer, No," that they had not approached any representative of any railroad about going into business.

I offer as Government's Exhibit 448 Interrogatory No. 29 directed to Parmelee.

(Said document, so offered and received in evidence, was marked Government's Exhibit 448.)

Mr. WILLIAMS: It reads:

"Did you, at any time subsequent to January 1, 1929, attempt to obtain Chicago taxicab licenses, either from the City of Chicago or by purchase from a holder of such licenses? If so, state when each such attempt was made and the name of each holder, from whom you attempted to purchase licenses."

917 Mr. WILLIAMS: I offer Government's Exhibit 449, being Parmelee's answer to plaintiff's interrogatory No. 29.

(Said document, so offered and received in evidence, was marked Government's Exhibit 449.)

Mr. WILLIAMS: The answer reads:

"Parmelee Transportation Company did not, at any time subsequent to January 1, 1929, attempt to obtain Chicago taxicab licenses, either from the City of Chicago or by purchase from a holder of such licenses."

I offer as Government's Exhibit 450, minutes of directors' meeting of Parmelee, dated March 15, 1933.

Mr. LYNTON: Before you proceed with that, may I clarify the record with respect to our standing objections?

The standing objections which we have made continue through Government's Exhibit 443. Starting with 444, which is the plaintiff's interrogatory No. 28, and ending with 449, numbers 445 through 449, being the answers to the interrogatories, there is no objection. And at

918 this point, namely, at the commencement of proposed Exhibit 450, the defendants reinstate their standing objections.

(Said document, so offered and received in evidence, was marked Government's Exhibit 450.)

Mr. WILLIAMS: I skip the first few paragraphs of Exhibit 450.

"The Chairman then stated that Yellow Taxi Corporation, New York, and National Transportation Co., Inc., operating subsidiaries of this Corporation (National Transportation Co., Inc. being wholly owned by Yellow Taxi Corporation, New York, of whose stock over 87% was owned by this Corporation), were contemplating the purchase, at the present time or in the near future, of 1,000 new Model T Checker taxicabs in the aggregate, which equipment was needed to replace existing equipment. Such taxicabs it was contemplated would be purchased partly in cash and the

balance of the purchase price was to be represented by promissory notes secured by conditional sales con-
919 tracts. He further stated that the seller, Checker Cab Sales Corporation, as a condition to accepting such promissory notes so secured, had requested that the promissory notes given by such subsidiaries be endorsed by this Corporation, and that this Corporation, in so far as it could legally do so, subordinate any claims it might have against such subsidiaries to the claim represented by such promissory notes, in order to insure the payment of the purchase price for said taxicabs. The Chairman further stated that negotiations for the purchase of these taxicabs had not as yet been completed, but that he considered it advisable to authorize the proper officers of this Corporation to act in accordance with the request of Checker Cab Sales Corporation upon the completion of negotiations."

They then resolved to endorse the notes.

I offer Government's Exhibit 451, being a memorandum from Rank to Oakland, dated February 26, 1934.

(Said document, so offered and received in evi-
920 dence, was marked Government's Exhibit 451.)

Mr. WILLIAMS: Exhibit 451 reads:

"I am enclosing herewith a communication received from the Motor and Equipment Manufacturers Association. As you know, we purchase little or nothing of cab equipment or supplies except through affiliated companies. Consequently, there does not seem to be any reason, from my point of view, for filing this report."

I offer Government's Exhibit 452, plaintiff's interrogatory No. 5 directed to Cab Sales and Yellow.

Mr. LYNTON: May the record show that ending with Government's Exhibit 451, the defendants' standing objections end.

(Said document, so offered and received in evidence, was marked Government's Exhibit 452.)

Mr. WILLIAMS: This interrogatory is:

"To Cab Sales and Yellow. With respect to the statements in your answers to paragraph 7 of the amended complaint that some, but not all, of the taxicabs purchased by you have been manufactured by
921 CCM, state:

"(a) The number of motor vehicles purchased by you from CCM for use as cabs during each of the calendar years 1929 to 1946, inclusive and during the period from January 1, 1947 to August 29, 1947.

"(b) The number of motor vehicles for use as cabs purchased by you from others than CCM during:

"(1) Each of the calendar years 1929 to 1945, inclusive;

"(2) January and February 1946;

"(3) The period from March 1946 to August 1947, inclusive."

I offer as Government's Exhibit 453, Yellow's answer to Exhibit 452.

(Said document, so offered and received in evidence, was marked Government's Exhibit 453.)

Mr. WILLIAMS: I will not go into the figures on Government's Exhibit 453, but it shows most of the cabs until 1947, practically all of them, were purchased from CCM.

I offer as Government's Exhibit 454, Cab Sales' answer to Exhibit 452.

922 (Said document, so offered and received in evidence, was marked Government's Exhibit 454.)

Mr. WILLIAMS: This again shows that until about 1947 the cabs came from CCM, with a few exceptions.

I offer as Government's Exhibit 455 interrogatory No. 4 directed to CCM and to Parmelee.

(Said document, so offered and received in evidence, was marked Government's Exhibit 455.)

Mr. WILLIAMS: Exhibit 455 reads:

"To CCM and Parmelee. With respect to your denial of the allegation of paragraph 6 of the amended complaint that CCM ships motor vehicles for use as cabs to Parmelee in Chicago, Illinois, state:

"(a) The number of motor vehicles shipped by CCM from its factory in Kalamazoo, Michigan, to Parmelee in Chicago during each of the calendar years 1929 to 1946, inclusive and during the period from January 1, 1947 to August 29, 1947.

"(b) The number of vehicles in each year's shipment that were manufactured by CCM;

923 "(c) The number of vehicles in each year's shipment that were trucks;

"(d) The number of vehicles in each year's shipment that were passenger carrying vehicles, and the passenger carrying capacity of each."

The answer then gives that information.

I offer as Government's Exhibit 457 Parmelee's answer to plaintiff's interrogatory No. 4.

(Said document, so offered and received in evidence, was marked Government's Exhibit 457.)

Mr. WILLIAMS: I will not read that answer.

I offer Government's Exhibit 458, which is plaintiff's interrogatory No. 6, directed to Parmelee.

(Said document, so offered and received in evidence, was marked Government's Exhibit 458.)

Mr. Williams: Exhibit 458 reads:

"To Parmelee. With respect to the statement in your answer to paragraph 7 of the amended complaint that some but not all of the taxicabs purchased by
924 your subsidiaries have been manufactured by CCM, state (Answer for each subsidiary only for those periods of time during which you have owned part of its stock):

"(a) The number of motor vehicles purchased by each of your subsidiaries for use as cabs during each of the calendar years 1929 to 1946, inclusive, and during the period from January 1, 1947 to August 20, 1947;

"(b) The number of motor vehicles for use as cabs purchased by each of your subsidiaries from others than CCM during:

"(1) Each of the calendar years 1929 to 1945, inclusive;

"(2) January and February 1946;

"(3) The period from March 1946 to August 1947, inclusive."

I offer as Government's Exhibit 459 the answer to Exhibit 458.

(Said document, so offered and received in evidence, was marked Government's Exhibit 459.)

Mr. Williams: It shows also that up until 1947 most of of them, practically all of them, came from
925 CCM.

Mr. Lynton: You mean until 1940, don't you?

Mr. Williams: No, about 1947.

Mr. Lynton: Well, the exhibit speaks for itself. We will not quarrel.

Mr. Williams: The exhibit has the details.

That concludes the documentary evidence at this time:

Mr. Hotchkiss now has a witness.

926 Mr. Hotchkiss: Mr. Mann.

James Edward Mann, recalled as a witness on behalf of the government, having been previously duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Hotchkiss:

Q. You are the same Mr. Mann who testified in this court the other day? A. That is right.

Q. You testified at that time in part with respect to making certain file searches at the offices of Yellow Cab Company? A. Yes, that is right.

Q. Did you also make certain file searches at the offices of Checker Cab Manufacturing Company? A. Yes, I did. I started on March 7, 1946.

Q. I hand you what has been marked for purposes of identification Government's Exhibit 83 and ask you whether you saw that exhibit or that document that has been so marked during the course of your file examination at
927 the Checker Cab Manufacturing Company? A. Yes, I did.

Mr. LYNTON: I would like to see it.

By Mr. HOTCHKISS:

Q. Will you state the circumstances under which you first saw this document which has been marked for identification as Government's Exhibit 83? A. I took that document from a file folder which I had obtained from the files located in Mr. Morris Markin's room or office at the Checker Manufacturing Company's plant in Kalamazoo, Michigan.

Q. What did you then do with this document, No. 83? A. I took that document, Document No. 83, and another document which was identical to it. I took both documents in to Mr. Oakland's office and made the request that I be allowed to take that document back to Chicago with me.

Q. Do you mean this physical document here? A. Yes, sir, rather than have it photostated. Our usual procedure was, after I took a document—

Mr. LYNTON: I suggest the witness simply tell us what he did in this particular case.

By Mr. HOTCHKISS:

Q. What did Mr. Oakland say to that request?
928 A. Mr. Oakland called in his secretary, a Miss Esther Short, asked her in my presence to compare the document, 83, with the other document that I had extracted from the files in Mr. Markin's room, which was identical, so far as I was concerned, with that document.

Q. Was the other document a photostat? A. No, it was a copy, a similar document to that.

Q. Proceed. A. Mr. Oakland asked his secretary to compare the two documents to see if they were actually identical.

Q. Yes. A. The comparisons—

Q. What further conversations did you then have with Mr. Oakland with respect to this document, if any? A.

Well, after the young lady had a chance to compare the two documents and she found them to be identical, Mr. Oakland gave me—

Mr. Lynton: Did that happen in your presence?

The Witness: Yes, I believe I went out with her and we made the comparison together. The secretary informed Mr. Oakland that the documents were identical, and
929 Mr. Oakland at that time gave me permission to take that document back to Chicago with me without it being photostated.

By Mr. Hotchkiss:

Q. Mr. Mann, I now hand you what has been marked for purposes of identification as Government's Exhibit 139, which appears to be an organizational chart, and ask you if you ever saw that chart before? A. Yes, I have seen this chart before.

Q. When did you first see it? A. During my visit to Checker Manufacturing Company in March of 1948—1946.

Q. Will you explain the circumstances under which you first saw it? Did you extract that from any files? A. No, Mr. Boldinger, who was on the investigation with me, extracted this document from the files of the Checker Manufacturing Company. We discussed the document, and then Mr. Boldinger and myself went into Mr. Oakland's office and asked him to explain this document to us.

Q. What did he state? A. He went over the entire
930 chart with us, and any questions we had concerning it he explained to us, and answered for us. He then —we asked him to bring this document up to date. It was originally made for January 1, 1944, and at that time when we were talking to him it was in March of 1946, and we asked him if any changes had taken place since the date when the chart was originally made

He told us that there had been changes made, and while we were there he made various changes in the chart in pencil to bring it up to date.

Q. He made those changes on the chart in pencil in your presence? A. Yes, sir.

Q. Mr. Mann, will you state whether, on removing documents from the files of Checker Cab Manufacturing Company, you customarily marked them for purposes of identification in any way? A. Yes. I used a system—

Q. You did? A. Yes, I did.

Q. What type of identification did you put on those
931 documents? A. On the documents that I wanted photostated, by the Checker Manufacturing Company, I put the No. 11 first and then a dash—number for the

document and the letter "M" standing for my own name, my first initial of my last name.

Q. Was any other form of identification used by the government investigators at the Checker Cab Manufacturing Company? A. Yes. Mr. Boldinger used the letter "C" to represent Checker Manufacturing Company, and then a dash and number of the document that he had extracted from the files. Then also his initials would go on the document.

Q. Those identifying symbols were put directly on the documents which you wished to have photostated, is that correct? A. Yes, that is right.

Q. What identifying symbols were put on documents which were extracted at the offices of Yellow and Yellow Cab Company? A. The No. 10 was used to identify Yellow, Chicago Yellow and its subsidiaries. Then a dash, and the number of the document extracted, and either my initials,
"J. E. M." or Mr. Balthis' initials, "D. B.," or Mr.
932 Hayden's initials.

Q. What identifying symbols were put on documents removed from the files of Parmelee Transportation Company? A. The symbol No. 4 was used with a dash, the number of the document extracted and the letter "P" which stands for Mr. Prendeville of our office.

Mr. Hotchkiss: That is all.

933 Cross Examination.

By Mr. Lynton:

Q. Mr. Mann, you have testified that Government's Exhibit 83 for identification was found by you in files in Mr. Markin's room at Kalamazoo, is that correct? A. Yes, that is right.

Q. Was that Mr. Markin's room or Mr. King's room? A. Mr. Markin's room.

Q. How do you know that? A. I asked Mr. Oakland last Wednesday, a week ago Wednesday, as to whose room that was. I drew a diagram of the Checker Manufacturing offices. I showed that diagram to Mr. Oakland. He informed me that the room that I had designated was Mr. Markin's room.

Q. Was it reported to you that that was Mr. Markin's room earlier than a week ago Wednesday? A. Yes, it had been.

Q. By whom? A. By Mr. Oakland, by other people in the firm.

Q. At the time of your investigation at Kalamazoo? A. That is right.

934 Q. Did you ever hear of Mr. James King? A. Yes, I have.

Q. Do you know whether that was his room? A. I don't.

Q. Do you know whether James King had a room in any of the offices of Checker Cab Manufacturing Corporation at Kalamazoo? A. I don't know. I didn't meet Mr. King.

Q. Did you ever inquire on that topic? A. I don't have a recollection on the subject.

Q. You testified also on direct examination that you found this document, Government's Exhibit 83 for identification, in the files in the room which you describe as Mr. Markin's file, is that right? A. Yes.

Q. And I take it that you were just looking generally through the files and you came upon this document, is that right? A. Do you mean I was looking generally through Mr. Markin's files?

Q. Through the files located in that room. A. I might clarify it this way. I was told by Mr. Oakland at one time to wait and not go through Mr. Markin's files until Mr. Markin came back himself and would give me per-
935 mission. So I was not given permission to go into Mr. Markin's files immediately upon the start of my investigation, but only after Mr. Markin came back to the corporation.

Q. Did Mr. Markin personally give you permission? A. He personally gave me permission.

Q. He spoke with you? A. Yes, he did.

Q. And he said it was all right? A. He said it was all right, yes.

Q. And then after that you ran generally through the files located in that room? A. That is correct.

Q. Incidentally, did Mr. Markin give you permission to look at all the files in that room or only certain of the files? A. I really don't know.

Q. Would it refresh your recollection if I suggested you were told that you might look at some files, but that you might not look at Mr. Markin's personal files? A. By "personal files" do you mean—

Q. I am stating a question. Does it suggest, does it
936 refresh your recollection, if I suggest that? A. No, it doesn't.

Q. Do you recall whether there were any documents located in that room which were described by Mr. Oakland as Mr. Markin's personal files and which had no relationship whatever to the Checker Cab Manufacturing Corporation? A. I know that at one time—

Q. No, you can answer the question. Did Mr. Oakland ever state that to you? A. That there were certain files that were personal?

Q. That is right. A. At one time Mr. Oakland actually had files in front of him which he said were personal files of Mr. Markin's, and he explained to me the documents that were in those files, and said, "You don't certainly want to see these. This deals with say, a yacht Mr. Markin bought."

Q. You did not look at those files? A. No, I did not.

Q. The answer is you saw only certain of the files and not all of the files, is that right? A. Not as far as that
937 room is concerned, no. I think I looked at all the files in that room.

Q. Is that your best recollection, that you looked at all the files in the room which you described as being Mr. Markin's room? A. That is right.

Q. When you looked at all those files, was Mr. Oakland present? A. I think I was working with Mr. Moss, the comptroller of the company—

Q. You don't seem to answer my questions. I asked you whether Mr. Oakland was present. A. I don't think he was present.

Q. Was Mr. Markin present? A. No, he was not.

Q. Now, I take it that you just ran through these files and looked at document and document, is that right? A. I went through the documents, and anything I thought was important I looked at carefully and read it.

Q. Right, and you extracted this document? A. That is right.

Q. And this is physically the document which you
938 extracted? A. Yes.

Q. And I refer of course to Government's Exhibit 83 for identification. A. That is right.

Q. You testified on direct examination that you found another copy of this document. Where did you find that? A. The same place, right with that document.

Q. They were both together? A. Right together, yes. I think there were two other documents similar to these which are exactly like them in that file.

Q. Are you testifying there were three or four copies of this document, which is Government's Exhibit 83? A. I would say that there were. I know that there were two, and my recollection is that there were more than two, perhaps three or four.

Q. Your best recollection is that there were three or four? A. My best recollection would be three, yes.

Q. And they were all together in that room? A. Yes, that is right.

Q. Do you know who prepared this document?
939 A. No.

Q. Did you ask anybody? A. I don't have a recollection of whether I asked Mr. Oakland or not.

Q. Do you know whether or not this document was prepared by any outside publicity man? A. I don't know that.

Q. Who had no relationship whatever to Checker Cab Manufacturing Corporation? A. I don't know that.

Q. Do you know whether that document was prepared by any outside bankers who had no relationship to Checker Cab Manufacturing Corporation? A. I don't know that.

Q. Do you know whether this document was prepared by anybody who might be interested in selling securities of Checker Cab Manufacturing Corporation? A. No.

Q. You have no knowledge whatever as to the original source of this document, do you? A. No.

Q. And you made no such inquiry, did you? A. I
940 have no recollection on that point, whether I asked Mr. Oakland about that or not.

Q. You testified on direct examination that you and Mr. Oakland's secretary personally compared this copy, Government's Exhibit 83 for identification with a similar copy of the document, is that right? A. Yes, that is right.

Q. And did you find any differences whatever between the two? A. I don't know whether we did or not. I don't think we did.

Q. Isn't it your best recollection you found no differences? A. That would be my best recollection.

Q. And didn't you testify on direct examination that these documents were identical and Mr. Oakland's secretary found them to be identical, with you? A. That is right, I think that is what happened.

Q. Did you look at the cover of this document, the outside cover, and did you compare that outside cover with the cover of the other document? A. I imagine we did, yes.

Q. It is your best recollection that you did,
941 isn't that right? A. My best recollection is that these two documents were found to be so identical that Mr. Oakland would allow me to take to Chicago this copy. He wanted to have—

Mr. LYNTON: I move to strike it out.

The WITNESS: A copy of everything that I had.

Mr. LYNTON: I move to strike out the answer as not responsive.

The COURT: Sustained. Listen to the question and answer it directly.

(The last two questions and answer were read by the reporter.)

The WITNESS: That is true.

By Mr. LYNTON:

Q. And it is your best recollection now that the outside covers were the same, isn't that right? A. I would say that they were substantially the same, yes.

Q. Do you recollect any discrepancy whatever? A. I think there may have been some. Even a different color on the outside.

Q. So far as the language used on the outside cover,
942 was there any discrepancy whatever? A. I don't believe there was.

Q. And your best recollection is that there was not, isn't that right? A. I believe that is true.

Q. Do you recollect having any discussion with anybody at Checker Cab Manufacturing Corporation concerning the contents of this? A. No, I don't.

Q. So that when you took it away with you you had no knowledge whatever as to the accuracy or the inaccuracy of these contents, is that right? A. That is true.

Q. And you had no knowledge whatever as to the original source of this document? A. That is right.

Q. So far as you were concerned, it might have had the same status as any document sent in by an outsider to Checker Cab Manufacturing Corporation, isn't that right? A. I have no other knowledge than that I found it in the files.

Q. Are these pencil markings on this copy Government's Exhibit 83 for identification yours?

943 Mr. HOTCHKISS: I wish to stipulate at this time that if there are any bracketed pencil marks on that, that I made them for the purpose of the excerpts.

Mr. LYNTON: Very well, Mr. Hotchkiss.

Q. Aside from the bracketed pencil notations are the other pencil notations yours, Mr. Mann? A. Do you see any other pencil notations?

Q. Yes, I do. Would you like me to point them out to you? A. Yes.

Q. On the cover I see, in the lower lefthand corner, "X122," and on the righthand corner, "X." A. Those are not mine.

Q. Do you know who made them? A. No, I don't.

Q. Were they the Government's— A. You will have to ask somebody else. I didn't put them there.

Q. Your answer would be the same for all these other notations appearing in the lower lefthand corner of the separate pages included within that document, isn't that right? A. The ones I have seen so far are not mine.

944 Q. Look through all of them. A. All right.

Mr. Williams: It is our practice to number all the pages when they are photostated. We had them photostated—

Mr. Lynton: Then you will stipulate the "X" notations were made by the Government?

Mr. Williams: That is right. I think that is probably the case.

By Mr. Lynton:

Q. How long did you continue your investigation at Kalamazoo, Michigan? A. The first time I was there was about ten days, I believe, and the next time three days.

Q. Was that the full time you spent on your investigation of the Checker Cab Manufacturing Corporation at Kalamazoo? A. Yes.

Q. Thirteen days in all? A. I believe that is about right.

Q. And how long a time did you spend on your investigation with respect to Yellow and Chicago Yellow?

A. I think it would be about three weeks. It

945 would be just a guess. I don't know.

Q. That is your best recollection? A. Yes, that is right.

Q. That would bring us to about thirty-four days spent on your investigation with respect to those three companies. Did you conduct any— A. Pardon me. I didn't follow your figuring there.

Q. Three weeks, or twenty-one days— A. Yes.

Q. Plus thirteen, are thirty-four. A. How many companies?

Q. Three companies: Chicago Yellow, Yellow, and Checker Cab Manufacturing Company, is that right? A. Utilities and Benzolene you are throwing in?

Q. I am not throwing anything in. So far you testified to three companies. A. And their subsidiaries.

Q. And their subsidiaries. Beyond those three companies and any subsidiaries, did you spend any other time in investigation with respect to any of the defendants in this action? A. Yes, I did.

946 Q. How much time? A. It would be pretty hard for me to estimate.

Q. Give us your best approximate estimate. A. Oh, I would say ten days. I am not sure. It might be way off. I don't know. It is my best estimate at the present time.

Q. Speaking approximately, your best estimate then is that you spent a total of about 44 days in investigation with respect to the defendants in this action, is that correct? A. That is right.

Q. And all during that time you ascertained no information with respect to this Exhibit for identification No. 83 other than that to which you have already testified, isn't that right? A. That is right.

Q. And you never made any inquiries, did you, other than those that you may have testified to already, is that right? A. I did not personally make any other inquiries, no.

Q. And that is all you know about this document Government's Exhibit 83 for identification? A. That is right.

Mr. Lynton: That is all.

947 Mr. Hotchkiss: That is all.

(Witness excused.)

The Court: The court stands recessed for ten minutes.

(Recess taken.)

Mr. Williams: Mr. Oakland, will you take the stand, please, and be sworn?

Ralph E. Oakland, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Williams:

Q. State your name, please. A. Ralph E. Oakland.

Q. What is your home address? A. 2705 Clovelly Road, Kalamazoo, Michigan.

Q. By whom are you employed and what is your present status with the company? A. Checker Cab Manufacturing Corporation; First Vice-President and Treasurer.

948 Q. Are you also a Director? A. And Director.

Q. I show you a document which has been marked Government's Exhibit 77 for identification, and ask whether you have seen that document before.

Mr. LYNTON: Before you answer, Mr. Oakland, I would like to see that document when you are finished inspecting it.

By Mr. WILLIAMS:

Q. Will you answer the question, please? A. Yes.

Q. Did you prepare the document? A. I did not.

Q. Where did you see it before? A. The way I know I saw it before is I see my handwriting on there

Q. Which handwriting on the exhibit is your handwriting? A. These pencil figures up here.

Q. You refer to the pencil figures in the upper righthand corner and to the words on page 2? A. That is right.

Q. Do you have any recollection as to how your handwriting got on that document? A. No, I don't.

949 Mr. CLIMENKO: May I see it, Mr. Williams?

Mr. WILLIAMS: Yes.

Q. Do you know whether that document came from the files of the Checker Cab Manufacturing Company? A. No, I don't.

Mr. WILLIAMS: I might call attention to the fact that it bears the number 11, as Government's Exhibit number, which shows the date it came from the files of Checker Cab Manufacturing Company, and at this time I will offer Government's Exhibit 77 in evidence.

Mr. LYNTON: I object to it. I think no foundation whatever has been laid for it.

Mr. WILLIAMS: It has been shown the witness' handwriting is on it.

Mr. LYNTON: I am perfectly willing to allow that part of the document which contains the handwriting of this witness be marked into evidence. Nothing else has been shown with respect to the typed portion of the document.

Mr. WILLIAMS: It has been shown that it came from the files of the Checker Cab Manufacturing Company, by the testimony of Mr. Mann and by this witness.

950 The COURT: It has to be identified properly, Counsel. It has not been identified.

By Mr. WILLIAMS:

Q. I hand you Government's Exhibit 168 and call your attention to the first two paragraphs. Will you read that to yourself, please?

Were you with Checker Cab Manufacturing on August 2, 1933? A. I was.

Q. Do you know whether at that time the law firm whose heading appears at the top of this letter was attorney for CCM? A. Not to my knowledge.

Q. Have you ever heard the name of that law firm before? A. Not until the attorneys showed me this copy of this letter recently.

Q. What was your position with CCM in 1933 in August? A. Well, on August 1 I was Vice-President and Treasurer; on August 2 I was Assistant Treasurer; on August 14 I was re-elected Vice-President and Treasurer.

Q. You say at that time, as far as you know,
951 this law firm did not represent CCM? A. As far as I know.

Q. And you never heard of this law firm until the attorney showed you this letter? A. That is right.

Q. I show you Government's Exhibit 201. You will note it is signed by Helen Logan. Do you know Helen Logan? A. I do.

Q. Will you tell us who she is?

952 Mr. Lynton: May I see that a moment?

The Witness: Helen Logan is Secretary to Mr. R. S. Pruitt.

By Mr. Williams:

Q. Did Mr. R. S. Pruitt at the date of that letter have any connection with CCM? A. He was secretary and general counsel.

Q. Is Mr. Pruitt a lawyer? A. He is.

Q. Do you know whether Parmelee made any disposition of the assets of Motor Cab Transportation Company in New York?

Mr. Lynton: Just a moment.

Will you read that question back, please?

(Last question read by reporter.)

The Witness: I object to the form of the question. Among other things it assumes a lot of facts which have not been proven. I suggest you take the steps one by one, if you want an answer.

The Court: Sustained.

By Mr. Williams:

Q. Do you know whether CCM at one time owned stock in Motor Cab Transportation Company? A. They did.

953 Q. Do you know whether they sold that stock, and to whom it was sold? A. I don't believe it was sold. It was transferred to Parmelee in a reorganization.

Q. So that Parmelee became the owner of that stock? A. That is right.

Q. Do you know whether Parmelee made any disposition of that stock by transfer or sale? A. No, they did not.

Q. Do you know whether Parmelee made any disposition of the assets?

Mr. LYNTON: Will you read the question? I did not quite hear it.

(Last question read by reporter.)

Mr. LYNTON: Do you mean whether Parmelee sold the assets as distinguished from the stock of Motor Cab Transportation Corporation?

Mr. WILLIAMS: That is right. He has testified they did not sell the stock.

Mr. LYNTON: I object to the form of the question, because if they did not sell the stock obviously Motor Cab Transportation Company was the owner of its assets.

954 By Mr. WILLIAMS:

Q. Do you know whether Motor Cab Transportation is still in existence? A. It is not.

Q. What happened to it? A. Shortly after the acquisition of Motor Cab by Parmelee, the Motor Cab was dissolved.

Q. And what became of the assets, do you know? A. Parmelee then had stock of all the subsidiary companies.

Q. I don't believe that quite answers the question. What became of the assets—

Mr. LYNTON: I think it does answer the question.

By Mr. WILLIAMS:

Q. What became of the assets of Motor Cab? A. As far as I know, that is all the assets they had, was stock in other corporations.

Q. Did any subsidiary of Motor Cab own cabs in New York City? A. They did.

Q. What became of the cabs and cab business?

Mr. LYNTON: I object to the form of the question. I think the answers are extremely indefinite. Let us

955 identify what corporation he is speaking about and what particular assets he is speaking about, and fix the time.

The COURT: Yes. Let him give more details.

By Mr. WILLIAMS:

Q. What subsidiaries of Motor Cab operated cabs in New York? A. Black Beauty, M. C. T. Co. Inc., and Hamilton Peters Operating Company.

Q. Do you know whether those subsidiaries have now been dissolved? A. They have.

Q. When were they dissolved? A. I can't give you the exact dates. My best recollection would be in 1932, or it may be sometime later.

Q. Did each of those subsidiaries operate cabs in New York City?

Mr. LYNTON: Did each of the subsidiaries owned by Motor Cab Transportation Company—is that the question?

Mr. WILLIAMS: Yes, that is the question.

The WITNESS: I understood it to be each of those three subsidiaries I just named—

By Mr. WILLIAMS:

956 Q. Yes. A. Yes, they all operated taxicabs.

Q. Who was the parent of each of these subsidiaries at the time they were dissolved? A. Parmelee Transportation Company.

Q. What happened to the cabs at the time of the dissolution of these operating subsidiaries?

Mr. LYNTON: I object to the form of the question.

By Mr. WILLIAMS:

Q. Let's take one at a time, then.

Mr. LYNTON: Why not fix the time?

Mr. WILLIAMS: He fixed the time, 1932, when they were dissolved.

Q. What happened to the cabs of Bell when it was dissolved?

Mr. LYNTON: I object to the form of the question. It assumes that the cabs were in possession of these corporations at the time of the dissolution.

I suggest counsel fix the time. I do not want to be captious about this, but it makes it very difficult and a very indefinite record.

The COURT: Fix the time.

By Mr. WILLIAMS:

Q. What was the time of the dissolution of, let's
957 take Bell. A. I do not know. What is the company?

Q. Of Bell. A. Bell is not one of the companies involved.

Q. What were the three companies? A. Black Beauty, M. C. T. Co. Inc., and Hamilton Peters Operating Company.

Q. When was Black Beauty dissolved? A. As I said before, my best recollection is 1932, but it might be 1933 or 1934.

Q. Did it own cabs at the time it was dissolved? A. I do not know that.

Q. Let's take Hamilton Peters. When was it dissolved, to the best of your recollection? A. Sometime within those three years.

Q. Do you know whether it owned cabs when it was dissolved? A. I do not know that.

Q. What was the other? A. M. C. T. Co. Inc.

Q. When was it dissolved? A. During those three years.

Q. Do you know whether it owned cabs when it
958 was dissolved? A. I don't know.

Q. Did each of these companies operate cabs? A. They did.

Q. I show you Government's Exhibit 344, purporting to be a copy of a letter from you to Mr. Bieze and which reads:

"In our 'phone conversation today, Mr. Oakland instructed me to send you the enclosed green book on Cab Sales & Parts Corporation."

Will you tell me what the green book is that is referred to in that exhibit? A. Yes, it is a statistical document.

Q. What statistics does it show? A. Statistics of Cab Sales & Parts Corporation, and Checker Taxi Company.

Q. Will you tell us what some of those statistics are? A. Total revenue by years, and by cabs by years, by cab by month, gasoline consumed, amount of oil consumed, cost of tires, cost of public liability insurance, fares, rates of fare, live mileage, number of extra passengers, miles traveled, administrative expense, garage expense, maintenance cost. Maybe others that I don't recall.

959 Q. You say it shows those statistics by years. What period of years does it cover? A. Well, there is a green book each year, and that would show each year from the time of inception of Cab Sales & Parts Corporation.

Q. Is there any compilation of these green books into one book, or is there a separate— A. There is a separate book for each calendar year.

Q. Who prepared each book each year? A. I prepared the statistics for them.

Q. For how many years have you prepared the green books? A. I don't remember the first year, but probably ten years.

Q. How many copies do you prepare? A. I only prepare one copy, and that is given to somebody else who arranges to have them printed.

Q. Who is this person that arranges to have them print-

ed? Is it an employee of CCM? A. No, he is not an employee of—

Q. Will you tell us who he is? A. His name is Marrill Knox.

960 Q. What is his business? A. He is an engineer.

Q. Does he do anything with the book besides arrange for having it printed? A. Does he?

Q. Yes. A. No.

Q. Are the printed copies circulated to anyone besides yourself? A. As far as I know, Mr. Markin gets one, I get one, and Mr. Sokoll gets one.

Q. Does Mr. Bieze get one? A. No.

Q. Does anyone in Yellow get one? A. Excuse me?

Q. Does anyone in Yellow Cab Company get a copy? A. No, sir, they do not.

Q. Does anyone in Chicago Yellow Cab Company get a copy? A. No, sir, they do not.

Q. I call your attention to this letter addressed to Mr. Bieze and which reads:

— "In our 'phone conversation today Mr. Oakland instructed me to send you the enclosed green book on Cab Sales and Parts."

961 That is dated June 4, 1943. A. Mr. Knox also prepared what is called the yellow, which has the same statistics for Yellow Cab that the green book has for Cab Sales.

Q. In 1943, according to this letter sent by your secretary, Mr. Bieze did get a copy of the green book?

Mr. Lynton: I object to the form of the question. You are asking this witness to form an opinion of what the letter means. It is an incompetent question.

Mr. Williams: The letter speaks for itself.

Mr. Lynton: That is the objection.

The Court: He may answer this question.

The Witness: This is my copy of the green book which has been corrected, to prepare the second copy, and Mr. Bieze in turn gave it to Mr. Knox to have the copies printed.

By Mr. Williams:

Q. That shows Mr. Bieze got a copy in 1943. Did Mr. Bieze get a copy in any other year? A. I don't know. They were generally given directly by Mr. Sokoll to Mr. Knox.

Q. I am asking about books going to Mr. Bieze As I understand it, you say Mr. Bieze normally did

962 not get the books. Is that your testimony? A. That is right.

Q. But apparently 1943 is an exception, is that correct? A. That is right, and he only got the book to transmit it.

Q. Do you recall this transaction? A. No.

Q. In 1943? A. No, I do not.

Q. Why do you say that Mr. Bieze got the book only to transmit it? A. Because that is the only reason he would get it.

Q. Are you guessing on that? A. No. I know that.

Q. Or do you know that? A. I know it. Because Mr. Bieze doesn't have the yellow book available to him, or the green book available to him.

Q. I hand you a copy of Government's Exhibit 345, which is a letter from Merrill Knox. Is that the Mr. Knox you referred to? A. It is.

963 Q. Addressed to you.

"I am sending under separate cover two copies each of the black book and yellow book and green book."

Will you tell me what the black book is? A. The black book is the consolidation of Cab Sales and Yellow Cab statistics together with an estimate of the statistics of the other taxicabs operating in Chicago.

Q. Do the statistics vary from those you have already stated that are in the green book? A. They do not have as many statistics in there. Naturally, they don't estimate the administrative expenses or tire costs, or others.

Q. Who compiled the black book? A. Merrill Knox.

Q. Do you supply him with any information? A. I supply him with all the figures for Cab Sales.

Q. Do you give him any information other than that appearing in the green book? A. No, I do not.

Q. What is the yellow book? A. The yellow book is similar to the green book except that it has statistics

964 for the operation of the Yellow Cab Company of Chicago instead of Cab Sales.

Q. Who compiles the yellow book? A. I don't know whether Mr. Bieze or Mr. Knox does.

Q. Do you get copies of the black and yellow books? A. I do.

Q. Are they printed? A. I don't know the form of something that draftsmen copy. I don't know whether you call it printed or what you would call it. It is similar to—

Q. Do you know how many copies of the black book are prepared each year? A. I don't know that.

Q. Do you know how many copies of the yellow book? A. I don't know that.

Q. Do you know how many copies of the green book are prepared? A. Three.

Q. Are the black books prepared each year? A. Yes.

Q. I now show you Government's Exhibit 346, which is a letter from Mr. Bieze to Mr. Markin, dated
965 October 30, 1945, the first paragraph:

"As per our telephone conversation, I am enclosing herewith two photostatic copies of the brown book.

Will you tell me what the brown book is? A. I am not sure, but I believe it is the same statistics for the Pittsburgh Cab companies.

Q. Have you seen the brown book? A. Yes, I have.

Q. Do you know whether it is prepared annually? A. I believe it is.

Q. I hand you a copy of Government's Exhibit 83 for identification; have you ever seen that before? A. I have.

Q. Do you have a copy of it in your files? A. I have.

Q. Do you know who prepared that document? A. I do not.

Q. Do you know how it happened to be in your files?

Mr. Lynton: By "your files," I take it you mean the files of Checker Cab Manufacturing Corporation?

By Mr. Williams:

Q. What do you mean by your files? By your files,
966 do you mean in your own files— A. I mean in the files of Checker Cab Manufacturing Corporation.

Q. Do you know in whose office the files are located that contain the copy of that book? A. The office is now Mr. Markin's. It was formerly Mr. King's.

Q. How long had it been Mr. Markin's office? A. Three or four months.

Q. Did you see this Government's Exhibit 83 for identification when Mr. Mann was at Kalamazoo in 1946? A. I did.

Q. Did you discuss it with him at that time? A. Nothing other than he asked if he could have one copy as long as there were two.

Q. I wish to call your attention to—

First, let me ask you, how long have you been with Checker Cab Manufacturing? A. Since 1924.

Q. I call your attention to the statement at the bottom of page 4 of the section dealing with Checker Cab Manufacturing Corporation, and ask you to read it.

Mr. Lynton: Oh, no.

967 Mr. WILLIAMS: To yourself.

Q. Do you know whether that statement is true?

Mr. LYNTON: I object to that. The form of the question is completely bad. He asked the witness to read a statement himself, and then he asks the witness whether that statement is true.

The COURT: Sustained.

By Mr. WILLIAMS:

Q. Were you with CCM at the time that the formation of Parmelee was being discussed?

Mr. LYNTON: I object to the form of that question. If you are going to enter into questions of that sort, you ought to find out whether he knows that it was being discussed, when it was being discussed, with whom, and all that sort of thing.

Mr. WILLIAMS: The exhibits already in evidence show with whom it was being discussed at CCM.

Mr. LYNTON: You have not identified him with that.

Mr. WILLIAMS: He said he was with CCM at that time. If you want to go through all those details, I would just as soon do it.

The COURT: Read the question.

(Last question read by reporter.)

968 Mr. LYNTON: I don't want an assumption in the question.

The COURT: Read the question.

(Last question read by reporter.)

The COURT: Is there an exhibit in evidence showing that was discussed?

Mr. WILLIAMS: Exhibit 1 shows it was discussed at the Board of Directors of CCM.

The COURT: Let's find out if he attended the meeting.

Mr. WILLIAMS: He was not there. I will withdraw the question.

969 Q. Did you partake in any discussion just prior to the formation of Parmelee with anyone at CCM concerning the object of the proposed Parmelee Transportation Company?

Mr. LYNTON: I object to the form of the question. This is his witness.

By Mr. WILLIAMS: He has already testified he was with CCM since 1924.

The COURT: Read the question.

(Last question read by reporter.)

Mr. LYNTON: Among other things, there is an assumption there was a discussion concerning the object of Parmelee and a lot of things of that sort.

Mr. WILLIAMS: I am asking him whether there was a discussion.

The COURT: Can you ask another question? Was there a discussion? Was that embodied in there? Did you attend a discussion?

Mr. WILLIAMS: Was there a discussion?

The COURT: Is that a separate question?

Mr. WILLIAMS: I will start over.

970 Q. Was there any discussion with anyone at CCM in which you participated concerning the organization of Parmelee? A. Yes.

Q. With whom was that discussion? A. Mr. Markin.

Q. Will you tell us what the discussion was with respect to the formation of Parmelee?

Mr. LYNTON: Are you speaking of his first discussion with Mr. Markin?

By Mr. WILLIAMS:

Q. Will you fix the date of the discussion?

The COURT: Fix the time and place.

By the WITNESS:

A. Sometime prior to the organization of Parmelee, Mr. Markin informed me—

Mr. LYNTON: I cannot hear you.

By the WITNESS:

A. Sometime prior to the organization of Parmelee, Mr. Markin informed me that a group of men were planning on organizing a taxicab company which was going to consolidate some of the larger major taxicab operations.

By Mr. WILLIAMS:

971 Q. Was that all the discussion? A. I believe that is all the first time we discussed it.

Mr. WILLIAMS: That is all.

Mr. LYNTON: No questions.

(Witness excused.)

RAYMOND DOWDLE, called as a witness on behalf of the government, having been first duly sworn, testified as follows:

Direct Examination.

By Mr. WILLIAMS:

Q. State your name, please. A. Raymond Dowdle.

Q. What is your home address? A. 8134 South Essex Avenue.

Q. By whom are you employed? A. City of Chicago.

Q. In what capacity? A. Supervisor of the Public Vehicle License Commission.

Q. What was your employment about January 15, 1946? A. I was supervisor of the Public Vehicle License Commission.

Q. At that time, did you make an inspection of
972 certain records of Yellow Cab Company? A. Yes, sir.

Q. Will you tell us what you did in that inspection, and about when it was?

Mr. LYNTON: I object to this. I do not see any relevancy to this question.

The COURT: Well, it is a preliminary question. He may answer whether he made an inspection.

Mr. LYNTON: I think the witness has stated he did, and he was asked what he did.

The COURT: Well, let us find out.

By Mr. WILLIAMS:

Q. Go ahead. A. Well, after January 15th, I went over to the Yellow Cab Company and inspected their daily operating sheets, as to the number of cabs they were operating as of January 15th.

Q. What year was that? A. 1946.

Q. Who did you see at Yellow?

Mr. LYNTON: I object to this entire line of questions. It is perfectly obvious that these questions are directed to the question of how many cabs were in operation.
973 That not only is irrelevant to the entire controversy but in addition to that, he already had proved that.

The COURT: I was going to say doesn't the stipulation show that, and the documentary evidence?

Mr. WILLIAMS: It shows the total number of cabs that the city found were not operating on that day. I want to bring out the details, and they allowed 75 days leeway. As of January 15th, they only listed cabs that had not been operated during the last 75 days. I also want to bring out and lay a foundation for the offer of an exhibit as to the actual date each of the cabs was last operated.

Mr. LYNTON: What difference does that make?

Mr. WILLIAMS: We want to find out the actual figures.

Mr. LYNTON: I know, you want to find out a lot of things, but what difference does that make?

Mr. WILLIAMS: It also ties in with 175 cabs that were in storage at that time, and lays a further foundation—

The Court: He may answer. Read the question.
(Last question read by reporter.)

By the Witness:

A. Mr. Bieze.

974 By Mr. Williams:

Q I suppose we could step this thing up if counsel wishes to stipulate to facts.

Mr. Lynton: I am not going to stipulate to anything so utterly irrelevant, that has been covered by facts.

The Court: Well, as I understand, Mr. Williams, these exhibits do not show all of the matters that existed. He wishes this witness to supplement something. What specifically do you want to show?

Mr. Williams: There are two things I want to show; one, that 234 cabs of Yellow which were not operated on January 15th, and which the city gave notice that the actual cabs that had not been operated prior to the last 75 days. That is if any cab had operated during that 75 days, it was not included in the 234, and that is true of 87 for Checker.

The Court: In other words, there would be additional ones besides the 234?

Mr. Williams: Yes.

The Court: He may show that.

Mr. Williams: Then the other facts as taken from the work sheets of Mr. Dowdle, that he took off of
975 the operating sheets of Yellow showing when each cab by number last operated. If counsel wishes to stipulate to that, subject to check, we will dispose of it.

The Court: I think he is entitled to show anything in addition to what is already in evidence that will show a change in the figures.

Mr. Lynton: If your Honor please, I will stipulate to this extent, that this witness would testify in the form that Mr. Williams will state, subject to correction on our part at a later date.

Mr. Williams: I think that eliminates this witness.

Mr. Lynton: Suppose we do it right now to see if we can agree on the form.

Mr. Williams: This witness will testify that he did the work of making the check which led to two notices which went into evidence today to Yellow and Checker with respect to 234 cabs and 87 cabs that were then not being operated. That figure, 234 cabs, for Yellow, did not include cabs that had been operated since November 1, 1945.

and that 87 figure for Checker did not include cabs that had been operated since November 1, 1945.

976 Mr. LYNTON: And by the phrase "not been operated," you mean had not been on the streets of Chicago for operation?

Mr. WILLIAMS: That is right, that no revenue had been earned by those cabs during that period.

Mr. LYNTON: I will so stipulate subject to the reserved right to review the testimony on that topic, and subject to our objection that the entire scope of the inquiry is irrelevant and immaterial to the issues of this case.

The COURT: Well, the court will reserve its ruling on your last objection until the conclusion of the government's case.

Mr. LYNTON: Very well.

The COURT: If it has not been connected up and made relevant and competent, it will be excluded.

Mr. WILLIAMS: Further evidence this witness will testify to that he studied the operating sheets, the daily operating sheets of Yellow, and that he prepared work sheets showing the last date taken from the records of Yellow, and likewise that of Checker, on which each cab was operated, and that I wish to offer in evidence a statement prepared by our office from those work sheets, subject to check.

977

The COURT: Have you seen this, Counsel?

Mr. LYNTON: No, I have not.

The COURT: Well, the court will adjourn at this time. You will have an opportunity to look this over, and go over it with counsel, and you may be able to stipulate. If you cannot, then the court will rule.

Mr. LYNTON: If your Honor please, there is one question Mr. Williams has indicated that he wanted certain witnesses, and one of those was Mr. Markin. I wonder if the government is going to be brief with him, whether we cannot spend a few minutes necessary so that he may leave.

The COURT: Do you think it will be very long?

Mr. WILLIAMS: It will be at least a half an hour, I believe.

The Court: Well, it may be a little longer. He had better stay over.

Mr. LYNTON: All right.

The COURT: Would you want to convene earlier tomorrow morning say 9:30?

Mr. WILLIAMS: That is satisfactory to us.

Mr. LYNTON: If it is convenient to the court.

978 The COURT: It is all right with the court. We want to step it up a little.

(Thereupon, an adjournment was taken to 9:30 o'clock a. m. of the following day, June 2, 1948.)

979 No. 46 C 1339

UNITED STATES OF AMERICA, PLAINTIFF,

vs.

YELLOW CAB COMPANY, *et al.*, DEFENDANTS.

Before Judge LaBuy

Wednesday, June 2, 1948, 9:30 o'clock a. m.

Court met pursuant to adjournment.

Present:

Mr. Hotchkiss
Mr. Williams
Mr. Lynton
Mr. Ginsberg
Mr. Fuller
Mr. Climenko

Mr. WILLIAMS: Mr. Morris Markin, will you take the stand, please?

MORRIS MARKIN, called as a witness on behalf of the government, having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. WILLIAMS:

980 Q. Will you state your name, please? A. Morris Markin, M-a-r-k-i-n.

Q. What is your home address? A. 3297 North Westnedge Avenue, Kalamazoo, Michigan.

Q. Are you connected with the Checker Cab Manufacturing Company? A. I am.

Q. In what capacity? A. President and general manager.

Q. How long have you been president of Checker Cab Manufacturing? A. I believe since its inception, with some interruptions.

Q. When was the inception? A. I believe in 1922.

Q. Was there any interruption of your term as president after January 1, 1929? A. Yes.

Q. When was that? A. That was during the year 1933.

Q. Can you give us the dates on that, what period of time it was? A. I believe it was the early part of the month of August.

981 Q. During how long a period was that? A. For a short period.

Q. How long do you mean by a short period? Was it a period of days or weeks? A. I would say about, to the best of my recollection, about fifteen days.

Q. Did you have any connection with Checker Cab Manufacturing during that period?

Mr. LYNTON: I object to the form of the question. I would suggest you make that a little more definite, any connection with it. Do you mean, was he an officer of the company at that time?

By Mr. WILLIAMS:

Q. Were you an officer of the Checker Cab Manufacturing during that period? A. No, sir.

Q. Were you employed by Checker Cab Manufacturing during that period? A. I believe I was on the payroll.

Q. In what capacity? A. Well, I might say inactive.

Q. But were you a stockholder of Checker Cab Manufacturing during that period? A. Yes.

982 Q. Was there any interruption in your term as general manager of Checker Cab Manufacturing following January 1, 1929? A. I believe during the same period, when I was no longer president, I was also interrupted as general manager.

Q. Do you know who was president of the Checker Cab Manufacturing during that period of two weeks? A. Clarence Weymouth.

Q. I show you Exhibit 168 and ask you if you know the firm of attorneys whose name appears on the heading of this letter?

Mr. LYNTON: Will you identify the firm for the record, Mr. Williams?

Mr. WILLIAMS: The firm is Keehn, Poust & Keeley of Chicago.

By the WITNESS:

A. I did not.

By Mr. WILLIAMS:

Q. My question is, do you now know of that firm or at any time have you known of that firm?

Mr. LYNTON: I object to the form of the question. Do you mean did he ever hear of it?

Mr. WILLIAMS: Yes.

Q. Do you know of that firm?

983 Mr. LYNTON: I object to the form of that question. I do not know what that means.

The COURT: Sustained.

By Mr. WILLIAMS:

Q. Do you know whether that firm was employed by Checker Cab Manufacturing during or on the date appearing in that letter of August 2, 1933? A. I do not.

Q. Exhibit 205 in this case contains a statement that certain preferred stock of the Waverly Corporation was owned by First Chicago Corporation at the time of the inception of the Waverly Corporation. Are you familiar with the formation of the Waverly Corporation?

Mr. LYNTON: I object to the form of the question, if Mr. Williams means to connect this question with his earlier statement. I have no objection to the question standing alone, but I do not want to have it appear by the linkage of the two that you are suggesting that Mr. Markin's answer is addressed to the document rather than to your question.

By Mr. WILLIAMS:

Q. Well, let me ask you. Did you ever own any

984 stock in the First Chicago Corporation? A. I don't recall. What is the First Chicago Corporation?

Q. The First Chicago Corporation, as shown by this Exhibit 205, owned preferred stock in the Waverly Corporation about 1933.

985 Mr. LYNTON: I object to government's counsel attempting to suggest argumentatively what appears in the document in his questions here.

Mr. WILLIAMS: I am trying to find out what is meant.

The COURT: Will you read the question, Mr. Reporter?

(Last question read by reporter.)

Mr. LYNTON: I object to it.

The COURT: Sustained.

By Mr. WILLIAMS:

Q. Did you ever own stock in the First Chicago Corporation to your recollection? A. I don't recall that corporation.

Q. Did you hear the testimony of Mr. Oakland yesterday concerning the Yellow, Green, Black and Brown books? A. I did.

Q. Have you received a copy each year of the Yellow book after it was prepared? A. I did.

Q. Is that also true of the Green book? A. It is true of the Green book.

986 Q. Is it also true of the Black book? A. I do not believe there was any distinction between the Black and Green only in the cover. The contents are the same.

Q. Do you receive a copy of the Black book? A. I do.

Q. Do you receive a copy of the Brown book each year? A. I do.

Q. Do you know whether, about 1929, in January, 1929, Sisto & Co. was a stockholder in Checker Cab Manufacturing Corporation? A. I do.

Q. Was it? A. I believe they were.

Q. Was, at that time, Sisto & Co. the banker for Checker Cab Manufacturing Company? A. They were.

Q. Did you participate in the working out of plans that led to the formation of the Parmelee Transportation Company in 1929?

Mr. Lynton: I object to the form of the question, leading and suggestive, and implies also—

Mr. Williams: I would like to call attention to Rule 43-B.

The Court: I think the form of the question

987 is proper.

The Witness: What was the question?

(Last question read by reporter.)

Mr. Lynton: If your Honor please, my fundamental objection to the form of the question is that it connects plans with the working out of Parmelee Transportation Company. Now, there were plans, according to the minutes adduced in evidence in this suit concerning the formation of a company and then subsequently, as a matter of fact, a company was formed called Parmelee Transportation Company. The form of my objection was addressed to keeping all matters distinct. I have no notion of suggesting that Mr. Williams cannot ask both questions in parts, but this question links them both together.

The Court: I think the form of the question is proper. He may answer.

The Witness: Please read the question again.

(Last question read by reporter.)

The Witness: I participated in a plan to form a company.

By Mr. Williams:

988 Q. Was that company finally formed? A. Eventually.

Q. What was the name of the company when it was formed? A. The name of the company was Parmelee Transportation.

Q. Now, was it a part of the original plan that Parmelee would acquire operating companies operating about 10,000 cabs in the United States?

Mr. Lynton: I object to the form of the question as completely a conclusion, was part of the plan.

The Court: Sustained.

By Mr. Williams:

Q. Will you tell us what the plan was with respect to Parmelee, with respect to acquiring cab operating companies in the United States?

Mr. Lynton: I object to that. It is subject to the same objection as the last question. In addition to that, I suggest the witness be asked either to exhibit a document or to testify as to conversations and not conclusions.

The Court: No, I think it is proper. He may answer.

The Witness: Please read the question.

(Last question read by reporter.)

989 Mr. Lynton: If your Honor please, this question does exactly the same thing as the last question. Was there a plan to acquire companies in the United States.

The Court: No, the question is calling for a description of the plan. State what the plan was, is my interpretation of the question. He is asking him what that plan was.

By the Witness:

A. The original plan called for one deal.

The Court: A little louder so that I can hear you.

The Witness: The original plan called for one deal, not throughout the United States.

By Mr. Williams:

Q. What was that one deal?

Mr. Lynton: If your Honor please, I think the questions of the government simply ask for conclusions as to what is a group of discussions. Now, if the government wants to find out what happened, let the government ask what happened.

Mr. Williams: Now, if the Court please, this man, as shown by the exhibits, told Checker Cab Manufactur-
990 ing Company directors that there was a plan, and he described the plan to them. He was the moving party in it.

Mr. Lynton: Will you refer to those matters?

Mr. Williams: We don't have to go back over the conversations.

The COURT: The objection is overruled. Read the question.

(Last question read by reporter.)

By the WITNESS:

A. That involved New York Yellow Taxi, Chicago Yellow Cab and Newark Yellow Cab.

By Mr. WILLIAMS:

Q. When was the original plan you have just described worked out with respect to January 1, 1929? Was it before or after that?

Mr. LYNTON: I must object to the form of the question, your Honor. This question was when was it worked out. I don't know what "worked out" means. When was it discussed?

The COURT: Well, suppose you be more specific in the formation of your question.

By Mr. WILLIAMS:

Q. With whom was this plan discussed and when?

A. The original plan was discussed with Ernest
991 H. Miller.

Q. Will you tell us about what time it was discussed? A. Sometime prior to the formation of the plan. I cannot state the time now.

Q. Would it help you to tell you that Parmelee was organized in April of 1929? Would that help you fix the date? A. Yes.

Q. Can you tell us about how long it was before the formation of Parmelee that this was discussed with Miller for the first time? A. That would probably take about five or six months back.

Q. You say that was the beginning of the plan. Was the plan changed after that?

Mr. LYNTON: I object to the entire characterization.

The COURT: The beginning of the plan, is that your objection?

Mr. LYNTON: Mr. Williams is making a statement, if your Honor please, which is a characterization of the witness' testimony.

The COURT: Will you read the question?

992 (The last question was read by the reporter.)

Mr. LYNTON: I object to the question.

The COURT: I sustain the objection.

993 By Mr. WILLIAMS:

Q. Was the plan subsequently changed from the one which you have described?

Mr. LYNTON: I object to the form of the question. He is assuming a plan.

Mr. WILLIAMS: If the Court please, this man has testified there was a plan, and he testified this was the original plan. I want to find out what the changes were.

Mr. LYNTON: He has not stated what the original plan was. He said there was a deal.

Mr. WILLIAMS: I asked him what the deal was, and he stated it.

Mr. LYNTON: I object to the form of the question. I think the Government is attempting to put conclusions in the question.

The COURT: I think there is merit to the objection. Let us get more details.

By Mr. WILLIAMS:

Q. Will you describe what the original plan was, or have you described it? A. I believe I did.

Q. Did you have subsequent discussions with Mr.
994 Miller after this first discussion? A. I did, many.

Q. Was there any discussion that changed the original plan that you have outlined?

Mr. LYNTON: Oh, I object to the form of the question, if your Honor please.

The COURT: He may answer. Read the question.

(Question read.)

By the WITNESS:

A. The plan did change considerably.

By Mr. WILLIAMS:

Q. Will you tell us what the first change was from the one you have described?

Mr. LYNTON: Just a moment, if your Honor please. The form of these questions is going to lead us completely afield into the realm of conclusions. We don't know whether this witness participated in any particular discussion; who changed the plan; what plan it was, or when it was done.

The COURT: I presume that will be developed later. It is a preliminary question.

Mr. WILLIAMS: Will you read the question?

(Question read.)

Mr. LYNTON: I object to the form of the question unless it is first laid as a foundation that this
995 witness participated in a discussion which resulted in the conclusion that there was a change of the plan.

Mr. WILLIAMS: He has already testified that there was such a discussion with Mr. Miller.

The COURT: Overruled. He may answer.

By the WITNESS:

A. Newark was eliminated.

By Mr. WILLIAMS:

Q. Was there any further discussion with Mr. Miller concerning changes in the plan after the elimination of Newark?

Mr. LYNTON: By this witness?

Mr. WILLIAMS: That is right, of course.

By the WITNESS:

A. There must have been discussions, but I do not recall today.

By Mr. WILLIAMS:

Q. Were there any cities added to the plan?

Mr. LYNTON: Oh, I object to that.

The COURT: Overruled.

Mr. LYNTON: When, if your Honor please.

The COURT: Well, he may follow it up by fixing the
996 time and place, if the answer is in the affirmative.

Mr. LYNTON: I have a further objection. I should like the question made definite so that we ascertain whether this witness participated in any possible change of the plan, assuming a continuation of a plan at some subsequent time. The difficulty with these questions is that they are so indefinite that they take in all sorts of conclusions and all sorts of persons.

The COURT: He may answer.

Mr. WILLIAMS: Will you read the question?

(Question read.)

By the WITNESS:

A. At what time?

The COURT: I cannot hear you.

The WITNESS: At what stage?

By Mr. WILLIAMS:

Q. After Newark was dropped and before the organization of Parmelee? A. I don't believe so.

Q. The evidence shows, Mr. Markin, there was a DeLuxe Cab Company,—

Mr. LYNTON: Will you speak up, Mr. Williams, please?

997 By Mr. WILLIAMS:

Q. The evidence shows, Mr. Markin, there was a DeLuxe Cab Company operating in Chicago about 1930 in which you had a stock interest; that that stock went to

Parmelee, and that thereafter the cabs of DeLuxe were combined into the Chicago Cab Company.

Now, did you own any stock in the Chicago Cab Company?

Mr. LYNTON: I object to that. That is a conclusion on the part of Mr. Williams.

The COURT: I sustain the objection.

By Mr. WILLIAMS:

Q. Did you ever own stock in the Chicago Cab Company that operated cabs in Chicago? A. I don't believe so.

Mr. WILLIAMS: Does the Court wish to adjourn for the motions at this time? This next question will take quite a bit of time.

The COURT: The Court will adjourn now for a few minutes.

(Thereupon the Court gave attention to other matters upon the call, after which the following further proceedings were had herein):

998 The COURT: Proceed, please.

Mr. WILLIAMS: We have decided we are through with the questions from Mr. Markin. You may cross examine.

Cross Examination.

By Mr. LYNTON:

Q. Mr. Markin, have you ever personally employed as attorneys the firm of Keehn, Poust & Keeley? A. No.

Q. Have you in your capacity as President or General Manager of Checker Cab Manufacturing Corporation, ever employed that firm? A. No.

Q. To your knowledge, has Checker Cab Manufacturing Corporation ever employed that firm? A. Not to my knowledge.

Mr. LYNTON: I have no further questions.

(Witness excused.)

999 MICHAEL M. SOKOL, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination.

By Mr. WILLIAMS:

Q. Will you state your name, please? A. Michael M. Sokol.

Q. What is your home address? A. 3530 Lake Shore Drive, Chicago.

Q. By whom are you employed? A. Cab Sales and Parts Corporation.

Q. In what connection are you employed? A. President and General Manager.

Q. How long have you been President? A. Since 1938.

Q. Were you employed by Cab Sales prior to that time?

Mr. LYNTON: You mean a different corporation, don't you? Just to keep the record straight, the present corporation, Cab Sales Parts Corporation was formed in 1938.

Mr. WILLIAMS: That is right.

Mr. LYNTON: It was the predecessor corporation.

By Mr. WILLIAMS:

1000 Q. Were you employed by the predecessor of the present Cab Sales prior to 1938? A. I was.

Q. In what capacity? A. General Manager.

Q. How long did you hold that position? A. From the latter part of 1933.

Q. What was your business prior to the latter part of 1933? A. I was President of the Checker Taxi Company.

Q. How long were you in that position? A. My first connection as President was in 1920. I resigned as President in April, 1923, and I was again employed and elected President of Checker Taxicab in May, 1931

Q. Were you ever connected with the Chicago Cab Company? A. Yes.

Q. In what capacity? A. As a director and president and general manager.

Q. Will you tell us about the period of time you held those three positions? A. From June, 1930, to May, 1931.

1001 Q. You had all three during that period, did you? A. Yes, sir.

Q. Were you ever connected with the DeLuxe Cab Company? A. No.

Q. Were you ever connected with any other cab company than those you have mentioned operating in Chicago? A. No.

Q. Will you tell us who you dealt with, if anyone, from the time you became connected with Checker Cab?

Mr. LYNTON: I object to the form of the question. I don't know what it relates to, "whom you dealt with if anyone".

The COURT: Sustained.

By Mr. WILLIAMS:

Q. Who hired you for the job with Checker Cab? A. Mr. Ernest Miller.

Q. I show you Government's Exhibit 398, which shows at the top of the page the number of cabs in operation, Cab Sales and Parts, and then follows various years. On this particular page I am showing you, page 35, it shows
1002 the years 1940, 1941, 1942 and 1943. One column shows the number of cabs in operation by Cab Sales and Parts; the next column shows Checker, and the next column shows the total.

I call your attention that prior to April, 1942, the total figures varied from month to month, and that following 1942, the total figures are all 1,000.

Will you tell me whether there was any difference in the method of calculating those figures after April of 1942 than prior thereto?

Mr. Lynton: I object to the question on the ground that it relates to immaterial and irrelevant matter in the case.

The Court: Overruled.

By the Witness: I would like to have you repeat the question.

Mr. Williams: Will you read the last question, please? (Question read.)

By the Witness:

A. I am not quite certain what you mean by that.

By Mr. Williams:

Q. You will note after that date the figures are
1003 all identical, the total figures are 1,000. Prior to that date, they vary by months.

Mr. Lynton: What is your question, Mr. Williams? I thought I understood what you were driving at. Now, I am confused.

Mr. Williams: Will you read the question?

Mr. Lynton: I object to the form of the question on the ground it has no meaning.

The Court: It is the same question that I ruled on.

By the Witness:

A. We never used any different methods of calculating than the ordinary procedure that is established by the rules of arithmetic.

By Mr. Williams:

Q. Isn't it a fact, Mr. Sokol, following April, 1942, you did not actually have 1,000 cabs operating in each one of those months? A. No, it is not a fact. We had 1,000 cabs operating in every month that a thousand cabs are shown.

Q. What do you mean by "operating"? A. We owned and operated 1,000 cabs.

Q. You mean that the cabs were actually on the
1004 streets when you say they were operated? A. At certain periods of time, yes.

Q. What do you mean by at certain periods of time? A. Well, if a cab was wrecked or inoperable for reasons of mechanical trouble, it would not be on the street at any particular moment you chose.

Q. You considered that as one of the cabs you were operating in considering this total of 1,000? A. We considered every cab we owned and every cab that was available for operation after ordinary repairs, as operating.

Q. Now, at the time the City of Chicago made an investigation of the number of cabs you were operating in January of 1946, do you recall they found eighty-seven were not then being operated? Do you recall that?

Mr. LYNTON: I object to the form of the question.

The COURT: Sustained:

Mr. LYNTON: I might say, as a matter of record, so that it will avoid the repetition of objections as to materiality and irrelevancy, I object to the entire line of questions on those two grounds.

By Mr. WILLIAMS:

Q. I show you Exhibit 476, which is a letter signed
1005 by the Public Vehicle Commissioner in Chicago to Checker Taxi Company. It refers first to the resolution of the City Council of December 28, 1945:

"Subsequent to the date of this resolution, this office, consistent with the action outlined by the City Council, made an exhaustive survey of the facts and your records relative to the operation of cabs, and it was found the following number of cabs had not been operated within a reasonable time".

Then follows 87 cabs numbered.

The final statement:

"In compliance with the resolution as passed by the City Council of the City of Chicago on December 28, 1948, as recited in full above, you are hereby notified that if the above numbered cabs are not in operation within five days of the date of this notice, said licenses will be canceled and issued to others as provided by the resolution".

Now, at the time of this investigation, did you con-
1006 sider that those 87 cabs were among the 1,000 that were being operated by you as you have used the word "operated"?

Mr. LYNTON: I object to the question. Mr. Williams has read a long statement, and the witness has made no answer. Then Mr. Williams has attempted—

The COURT: Overruled. He may answer.

By the WITNESS:

A. Yes, we considered those 87 cabs a part of our operation.

By Mr. WILLIAMS:

Q. Is there any seasonal fluctuation in the cab business, that is, the volume of business? A. Usually there is.

Q. Will you tell us what that fluctation is? A. Well, in some years there is more business available in the winter months than in the summer months.

Q. You say in some years. You mean it is not always true? A. It has not been true in the last years since the beginning of the war.

Q. Can you tell us for how long a period that was true prior to that? A. Pretty near always.

1007 Q. Is it true at the present time? A. The last year or so, no.

Q. Will you tell us the general nature of the type of cab used by your company in Chicago?

Mr. LYNTON: Today?

Mr. WILLIAMS: Yes.

By the WITNESS:

A. We have approximately 900 Ford automobiles, about 50 Dodges and about 50 Plymouths.

By Mr. WILLIAMS:

Q. What is their passenger carrying capacity? A. Comfortably, three, plus the driver.

Q. You mean three in the back seat when you say that? A. No, comfortably two in the back seat and one in the front seat.

Q. Are these cabs the general stock models of the cars you have named? A. Yes, sir.

Q. Now, what was the passenger carrying capacity of the Model A cabs used by you during the war, the CCM cabs? A. We did not use the Model K then.

1008 Q. Model A? A. "A"?

Q. Yes. A. Five passengers plus the driver.

Q. How were those passengers seated? A. Three in the back seat and two on the jump seat.

Q. Do your cabs have entry to any of the railroad stations in Chicago at the present time? A. All cabs have entry to the railroad stations.

Q. For the purpose of picking up passengers? A. Yes, sir.

Q. Has that always been true? A. Pretty nearly always.

Q. You say pretty nearly. When was it not true? A. There may have been times during the years of depression when there were too many cabs that were in the depots, or too many Yellow cabs in the depots.

Q. You say access to the station. Are you referring to access inside the ramp such as that over at the Union Station? A. Yes, sir.

Q. Do your drivers have any instructions to meet
1009 trains? A. Our drivers are supplied with a schedule showing train arrivals.

Q. Do they have any instructions with respect to meeting trains? A. We make no special demands on them with respect to meeting trains.

Q. They do meet trains, however, do they not, in the course of their business? A. Yes, sir.

Mr. Williams: That is all of this witness.

Cross Examination.

By Mr. Lynton:

Q. Mr. Sokoll, when you were describing the comfortably carrying capacity of the passenger cabs presently used by Cab Sales, you mentioned that the comfortable passenger capacity was three, two in the rear seat and one in the front seat. I take by your testimony that you mean, as a matter of fact, the physical arrangement of the cab, giving allowance for the driver, that was the comfortable passenger capacity, is that correct? A. That is correct.

Q. Now, as a matter of the ordinances of the
1010 ordinances of the City of Chicago, isn't it also accurate that a passenger, under the terms of the prevailing ordinance, is not to be carried in the front seat with the driver? A. That is correct.

Q. So that so far as the passenger carrying capacity of these present cabs, giving effect to the terms of the ordinance, it is two instead of three? A. Comfortably, two.

Mr. LYNTON: No further questions.

Redirect Examination.

By Mr. WILLIAMS:

Q. To your knowledge, do your cabs ever carry more than two passengers?

Mr. LYNTON: I object to that.

The COURT: Overruled.

By the WITNESS:

A. Yes.

Mr. WILLIAMS: That is all.

Mr. LYNTON: No further questions.

The COURT: You are excused.

(Witness excused.)

1011 RUDOLPH H. BIEZE, called as a witness on behalf of the government, having been first duly sworn, testified as follows:

Direct Examination.

By Mr. HOTCHKISS:

Q. Will you state your name, please? A. Rudolph H. Bieze.

Q. Where do you live? A. 10953 South Park Avenue, Chicago, Illinois.

Q. By whom are you employed at the present time? A. Yellow Cab Company.

Q. In what capacity at the present time? A. Vice president and treasurer.

Q. Are you employed by any other company other than Yellow Cab Company at the present time? A. No.

Q. You are not employed by Chicago Yellow? A. I am acting as an officer and director of Chicago Yellow Cab.

Q. What is your position with Chicago Yellow? A. Secretary and treasurer.

Q. Are you a director in either of those companies? A. I am a director in both companies.

Q. When did you first become affiliated with
1012 Chicago Cab Company? A. I have never been affiliated with Chicago Cab Company.

Q. When did you first become affiliated with Yellow Cab Company? A. On November 1, 1919.

1013 Q. What was the answer? A. November 1, 1919.

Q. When did you first become an officer of Yellow Cab Company? A. In May, 1929.

Q. When did you first become an officer of Chicago Yellow? A. About the same time.

Q. Who hired you as an officer of Yellow and Chicago Yellow in May of 1929? A. Benjamin Samuels and Tom Hogan recommended me for the position.

Q. Recommended you to whom? A. To the board of directors.

Q. And prior to the time you were employed, did the board of directors then approve that recommendation? A. They did.

Q. Prior to the time that recommendation was made to the board of directors, did you have any conversations with a Morris Markin? A. I did not.

Q. Had you met Morris Markin previous to that? A. I had not.

1014 Q. Did you know who Morris Markin was in May of 1929? A. I did not.

Q. You had never heard of him at that time? A. Well, I have seen his name in the papers in connection with the manufacture of cabs, but I had never met him.

Q. You had never met him? A. That is right.

Q. You knew in general what his business was and what his connection was?

Mr. LYNTON: I object to that. He has just answered what he knew about it. He said he saw his name in the papers occasionally in connection with the manufacture of cabs.

Mr. HOTCHKISS: He started to say at first he never had.

Mr. LYNTON: I object to the form of the question.

The COURT: Read the question.

(Last question read by reporter.)

The COURT: You may answer.

The WITNESS: In connection with the manufacture of taxicabs.

By Mr. HOTCHKISS:

1015 Q. Yes. Prior to May, 1929, the date of your employment as an officer of Yellow, had you met a Mr. Miller? A. No, I hadn't.

Q. Had you heard of him at that time? A. Yes, I had heard of him being associated with the New York Yellow Taxi Company.

Q. But you had not met him? A. I had not.

Q. Had you met a Mr. Rank in May of 1929? A. I did not meet him in May, 1929.

Q. You had not met him as of that time? A. That is right.

Q. You had not met him?

Mr. LYNTON: That is what he said.

By Mr. HOTCHKISS:

Q. Prior to that date? A. I had not.

Q. Prior to May of 1929, had you met any of the officers of the Checker Cab Manufacturing Company?

Mr. LYNTON: I object to the form of the question. I think he better establish who the officers were.

The COURT: You may answer.

By Mr. HOTCHKISS:

1016 Q. If you know that they were officers. A. I had not met any of the officers of Checker Cab Manufacturing Corporation.

Q. At the time you became an officer of Yellow and Chicago Yellow in or about May of 1929, did Yellow at that time own any stock of the Chicago Yellow Company?

Mr. LYNTON: I object to that question. It has no relationship to the case and it also asks for an assumption of knowledge.

The COURT: If he knows, he may answer.

By the WITNESS:

A. It did.

By Mr. HOTCHKISS:

Q. And how much stock did it own at that time, if you know? A. I don't know exactly, but I would imagine—

Q. Approximately? A. —it was around 10,000 shares.

Q. Approximately 10,000 shares. And do you know for how long a period of time it had owned that stock? A.

1017 As I recall it, it was the carry-over of the Public Stock Club that the company had. It was cases where the public had subscribed for stock and failed to make the payments, and the company had the stock. It was purchased for the public.

Q. Excuse me, I didn't get you? A. It was purchased for the Public Stock Club.

Q. For the Public Stock Club? A. That is right. The Public were buying Yellow Cab stock in the late twenties.

Q. And what was the Public, this club that you refer to? A. People would subscribe for stock on the installment plan.

Q. So that it was really this stock which Yellow held, was really stock which was being bought on the installment plan by members of the public, is that right? A. That is right.

Q. So that Yellow itself in May of 1929 did not itself have beneficial ownership of Chicago Yellow stock, is that correct?

Mr. LYNTON: I object to that. It is a legal conclusion and assumes a whole lot of things between the original date for installment and that date in May, 1929.

1018 Mr. HOTCHKISS: Yellow was holding this stock for purchasers among the general public, is that correct?

Mr. LYNTON: As of what time, Mr. Hotchkiss?

By Mr. HOTCHKISS:

Q. As of May, 1929? A. No.

Q. For whom was it holding it? A. As I recall, in answering the question I said that that stock had been acquired by Yellow Cab Company for this Public Stock Club, and where the payments were not kept up the stock was held in the treasury.

Q. It was turned over to the treasury of Yellow? A. Yes.

Q. And held there? A. That is right.

Q. Government's Exhibit 145, consisting of the minutes of a special meeting of the board of directors of Yellow Cab Company states—

Mr. LYNTON: As of what date, Mr. Hotchkiss?

By Mr. HOTCHKISS:

Q. As of the date December 21, 1931. It reads as follows, and I read a portion of it:

1019 "The Chairman—"

And these minutes show that Arthur W. Moore acted as Chairman of the meeting—

"stated that this corporation had heretofore purchased and now owns 61,565 shares of the capital stock without par value of Chicago Yellow Cab Co. Inc."

Do you know when that stock was purchased?

Mr. LYNTON: I object to the question. You find out whether the witness knows whether it was purchased first. I object to the form of the question as an assumption.

The COURT: Sustained.

By Mr. HOTCHKISS:

Q. Did Yellow purchase any stock? A. It did.

Q. And about what time did it purchase the stock referred to in these minutes? A. That stock apparently had

been acquired from the middle twenties all the way up to—1921 up to the time of that resolution.

Q. Now, in May of 1929 Yellow had 10,000 shares of stock, is that correct, or approximately? A. That is my guess.

1020 Q. And as of December 21, 1931, the report is made to the directors that it then owns 61,565 shares of Chicago Yellow stock. Was the difference between 10,000 and 61,000 odd shares of stock purchased after May, 1929?

Mr. LYNTON: Do you know, Mr. Bieze?

The WITNESS: I don't know.

By Mr. HOTCHKISS:

Q. If you know? A. I can't carry all those figures in my head.

Q. You have testified that Chicago Yellow—that Yellow did purchase stock in Chicago Yellow.

Mr. LYNTON: Your question is wrong and your recollection of the testimony is wrong, if you refer to that particular number of shares.

Mr. HOTCHKISS: No. I stated generally that he had testified that it had purchased—

The COURT: You may answer.

Mr. LYNTON: Mr. Hotchkiss meant to say Yellow had purchased, not Chicago Yellow. I think he used the same name twice.

The COURT: Read the question.

Do you wish to state a new question?

Mr. HOTCHKISS: Yes.

1021 Q. After May of 1929, on approximately what date did Yellow purchase any substantial block of Chicago Yellow stock?

Mr. LYNTON: I must object to the form of the question, the word "substantial."

The COURT: Sustained.

By Mr. HOTCHKISS:

Q. On approximately what date after May, 1929 did Yellow begin purchasing Chicago Yellow stock?

Mr. LYNTON: Your Honor, I have terrific regret at these continuous objections, but the form of questions require it. He says, "At what time after May, 1929 did Yellow begin purchasing these shares?"

The testimony has shown that shares were purchased from the middle twenties. I object to the form of the question.

Mr. HOTCHKISS: The testimony shows that as of May, 1929 Yellow had 10,000 shares of Chicago Yellow stock in

its treasury. The evidence further shows that as of December, 1931 Yellow owned 61,568 shares of Chicago Yellow stock. We are trying to ascertain when the difference between the 10,000 and 61,000 shares of stock was acquired.

1022 Mr. LYNTON: Mr. Hotchkiss, my objection was to the form of your question, and you say, "beginning" as indicating a period after Yellow had already acquired shares. That's all.

Mr. HOTCHKISS: The witness has testified that beginning in the middle twenties and presumably carrying on to this date, December 31, 1931—

Mr. LYNTON: Will you read the question back?

(The last question was read by the reporter.)

Mr. LYNTON: I renew the objection.

The COURT: Sustained.

By Mr. HOTCHKISS:

Q. On approximately what date after May, 1929 did Yellow first buy stock of the Chicago Yellow Company? A. As I recall it, Yellow had been purchasing this stock right along.

Q. Starting when? A. I said in the middle twenties.

Q. I said after May of 1929.

Mr. CLIMENKO: Is there a question pending?

The COURT: Read the question.

(The following portion of the record was read by

1023 the reporter:

"Q. On approximately what date after May, 1929 did Yellow first buy stock of the Chicago Yellow Company? A. As I recall it, Yellow had been purchasing this stock right along.

"Q. Starting when? A. I said in the middle twenties.

"Q. I said after May of 1929.")

Mr. HOTCHKISS: I move to strike out the witness' answer as being not responsive to the question.

The COURT: No, it may stand.

The WITNESS: I don't recall just what month in 1929.

Mr. LYNTON: There is no question before you, Mr. Bieze.

The WITNESS: No question? I am sorry.

By Mr. HOTCHKISS:

Q. How long did the Stock Club that you referred to continue? A. Up to about 1927 or 1928.

Q. Was it then closed down, or what happened to

1024 it at that time, do you recall? A. That was the stock that had been acquired on which the public failed to make the payments, and the subscriptions were cancelled.

Q. And that is the stock which Yellow had in its treasury as of May, 1929? A. That is right.

Q. Did it purchase any stock of Chicago Yellow between 1927 and 1928 and May of 1929, if you know? A. I don't know.

Q. You have no knowledge on that point? A. No.

Q. But Yellow did, after May of 1929, begin purchasing Chicago Yellow stock? A. That is right.

Q. Directing your attention now to the stock which was purchased by Yellow of the Chicago Yellow Company after May of 1929, were any conferences had between the officers, any of the officers of your company and any of the officers of the Transportation Management Corporation or Company with respect to such purchases of stock?

Mr. LYNTON: At which Mr. Bieze was present?

Mr. HOTCHKISS: That Mr. Bieze knows about.

Mr. LYNTON: I object to the question. It would
1025 be hearsay unless he establishes that Mr. Bieze was present.

Mr. HOTCHKISS: Even if Mr. Bieze heard about it through an officer of the corporation—

Mr. LYNTON: You have to establish that, Mr. Hotchkiss, before you ask.

Mr. HOTCHKISS: Even if Mr. Bieze heard about it from one of his fellow officers of the corporation.

The COURT: That would be hearsay.

Mr. HOTCHKISS: The testimony would be, I believe, competent in view of the fact that this is a conspiracy case and the officers are acting as agents of the corporate defendants named in this case.

Mr. LYNTON: I think at the minimum Mr. Hotchkiss ought to take this in steps, and I think the objections, if any, may be made and Mr. Hotchkiss can show his intentions.

The COURT: Yes. Suppose you add to your question whether or not Mr. Bieze was present at any of those conferences.

By Mr. HOTCHKISS:

Q. Mr. Bieze, were you present at any conference? A. I was not.

1026 Q. Were you present at any conferences with any officer of Checker Cab Manufacturing Company? A. I was not.

Q. You had no conferences with Mr. Markin?

Mr. LYNTON: You are speaking, of course, of that period, aren't you?

By Mr. Hotchkiss:

Q. At that time. And you had no conferences at that time with any of the officers of the Parmelee Transportation Company, is that correct? A. That is correct.

Q. At that time—and I am now speaking of the period from May of 1929 toward the end of 1931—did Yellow operate under a so-called management contract with the Transportation Management Company?

Mr. Lynton: I object to the form of the question. The management contract is in evidence and speaks for itself.

The Court: Overruled. You may answer.

By the Witness:

A. Yes.

By Mr. Hotchkiss:

Q. Did any of the officers of Transportation Man-
1027 agement Company ask to be advised by you concerning any stock purchases made by Yellow of the stock of Chicago Yellow?

Mr. Lynton: And by "you," do you mean Mr. Bieze?

Mr. Hotchkiss: I directed the "you to Mr. Bieze.

By the Witness:

A. No.

By Mr. Hotchkiss:

Q. Do you know whether they asked any other officers of Yellow to advise them concerning any such purchases? A. I do not. I do not know. I do not know of any.

Q. You do not know? A. That is right.

Q. Did you advise the Transportation Management Company or corporation in any way concerning the purchases of stock in Chicago Yellow?

Mr. Lynton: And there, again, by "you," you mean Mr. Bieze?

Mr. Hotchkiss: I am now speaking about Mr. Bieze.

Q. Proceed.

The Witness: Will you repeat that question?

(The last question was read by reporter.)

1028 The Witness: Not that I recall.

By Mr. Hotchkiss:

Q. Do you know whether any officer of Yellow or Chicago Yellow so advised the Transportation Management Company?

Mr. Lynton: I object to the form of the question. I have no objection to your asking him whether any officers of Yellow or Chicago Yellow reported that to him.

Mr. Hotchkiss: I am asking his own personal knowledge based on his own conversations with officers.

The Court: You may answer.

By the Witness:

A. I do not know.

By Mr. Hotchkiss:

Q. Mr. Bieze, was the Waverly Company or Corporation organized after May of 1929, to your knowledge? A. It was.

Q. Do you know the approximate date on which it was organized? A. As I recall it, December, 1931.

Q. And thereafter, Mr. Bieze, was all of the
1029 Chicago Yellow stock at that time owned by Yellow transferred or sold to Waverly Company? A. As I recall it, about that time it was sold to the Waverly Corporation.

Q. All? A. That is right.

Q. Did you in your official capacity at the time of the organization of Waverly have anything to do with the organization of that company? A. Just as treasurer of the company, signing checks, and so on; in forming of the corporation, no.

Q. I did not get your last. A. In forming the corporation, no.

Q. In forming the corporation, no? A. Yes.

Q. Mr. Bieze, prior to the incorporation of the Waverly Company, was its incorporation or its organization discussed by you with any officer of Checker Cab Manufacturing Company? A. No.

Q. Was its organization or incorporation discussed by you with any officer of the Transportation Manage-
1030 ment Company? A. No.

Q. Was it discussed by you with any officer of the Parmelee Transportation Company? A. No.

Q. Do you know whether any fellow officer of yours, that is, with Yellow, discussed such organization or incorporation of Waverly with the officers of any of those three companies that I have mentioned? A. I do not know.

Q. You do not know? A. No.

Q. Mr. Bieze, I call your attention to Government's Exhibit 197 consisting of the minutes of the regular meeting of the board of directors of Yellow Cab Company held on the 19th day of December, 1935, and I read the following excerpt from those minutes:

"Mr. R. H. Bieze thereupon retired from the meeting. The Chairman thereupon presented a proposed employment contract between this corporation and R. H. Bieze, dated December 19, 1935. Whereupon this corporation employs Mr. Bieze to act as its
1031 comptroller upon substantially the same terms and conditions as those contained in the contract with Mr. Stouffer.

"Upon motion duly made, seconded and carried, it was resolved that R. H. Bieze be and he is hereby employed as comptroller of the company for a period of three years from January 1, 1936 at a salary of $12,000 per annum, payable in equal monthly installments on the 25th day of each month, and that this corporation make available for a period of sixty days from December 19, 1935 for purchase by Mr. Bieze 500 shares of the capital stock of Chicago Yellow Cab Company, Inc., at not less than $12 per share net to the company, all as provided in the contract presented at this meeting."

I skip the next paragraph.

Mr. LYNTON: Is there a question addressed to that, Mr. Hotchkiss?

Mr. HOTCHKISS: I will have a question on it.

Q. "Mr. Bieze," and I am still reading from the minutes, "thereupon re-entered the meeting and upon
1032 being informed of the action of the board announced he would accept the employment to act as comptroller of the corporation for a three-year period beginning January 1, 1936 upon the terms and conditions stated in said contract."

Mr. Bieze, were you offered an option to purchase 500 shares of the capital stock of Chicago Yellow Cab Company at that time?

Mr. LYNTON: Are you trying to frame a conclusion from your meaning of that resolution that speaks for itself?

Mr. HOTCHKISS: The resolution speaks for itself, but it does not show whether Mr. Bieze was specifically offered the option or whether he accepted the option, or whether he bought any stock.

Mr. LYNTON: I object to it on several grounds; first of all, I object to it because I think your characterization is improper. Secondly, I think it is immaterial. The minutes have said that upon re-entering the meeting Mr. Bieze was informed of the resolution.

The COURT: Regardless of the resolution, it is proper for counsel to ask the witness, independent of the resolution, whether or not he had an option.

1033 You may answer the question.

Mr. LYNTON: I make the point of the objection, that I have no objection to Mr. Hotchkiss asking that, but I do object to his reading a long resolution and then, after he reads the resolution, to frame a question which by implication incorporates part of the resolution. That is the point.

The COURT: He may answer.

By the WITNESS:

A. Yes, I saw the option.

By Mr. HOTCHKISS:

Q. And on what date did you exercise your option? A. About that date.

Q. That was December 19th? A. I would say so.

Q. That same date, would you say approximately— A. It might have been that day or—about that time.

Q. About that time? A. That is right.

Q. Did you buy this 500 shares of stock outright and pay cash for it?

Mr. LYNTON: I object to this. I think this is a personal matter that has no relationship whatever

1034 to the issues of this case.

The COURT: Whether he paid cash or whether it was on the installment plan, it seems to me that is immaterial.

Mr. HOTCHKISS: I would like to know whether he paid cash or gave notes for it.

The COURT: I don't think it is material. Sustain the objection.

By Mr. HOTCHKISS:

Q. You did buy it? A. I did buy it.

Q. At what price did you buy this 500 shares of stock? A. As I recall it, 12⅜.

Q. How long did you keep this stock?

Mr. LYNTON: I object to that. This inquiry is completely immaterial.

By Mr. HOTCHKISS:

Q. Do you still own that stock?

Mr. LYNTON: The same objection.

The COURT: He may answer.

By the WITNESS:

A. I am still a stockholder in the company.

By Mr. Hotchkiss:

1035 Q. I say, do you still own that stock? A. I don't know.

Q. You don't know? A. No.

Q. With that 500 shares of stock, you don't know whether you retained that 500 shares of stock to the present time or whether you sold it?

Mr. Lynton: I object to it. You cannot cross examine this man.

The Court: He may answer.

By the Witness:

A. I am still a stockholder of the company and I don't know what shares I still have of the 500.

By Mr. Hotchkiss:

Q. As to those 500 shares— A. That is right.

Q. —you do not know? A. I do not know.

Q. At the same time that you were offered, or substantially the same time that you were offered these shares of stock, the 500 shares, was a similar offer made to Mr. Samuels, but involving 2,500 shares of stock?

Mr. Lynton: If your Honor please, I must

1036 object to these questions. These things are obviously part of employment contracts. They have no relevance to this action.

Mr. Hotchkiss: They are tied in—

Mr. Lynton: In what respect?

Mr. Hotchkiss: —with the Waverly. We are exploring what we have characterized in the past as the Waverly situation, the transfer of the stock owned by Yellow to the Waverly Company, and then thereafter the dissolution of that company, and certain acts done with reference to the stock of that company. That is what we are exploring. We wish to ascertain what happened to certain of the stock.

Mr. Lynton: You are doing no such thing. What you are doing now is to inquire whether or not certain of the officers of this company acquired options as part of their employment contracts. That is all you are inquiring about.

Mr. Hotchkiss: Certain options with respect to certain stock.

Mr. Lynton: Of what?

Mr. Hotchkiss: If counsel will be patient the government will proceed.

1037 Mr. Lynton: I object to the question.

The Court: Overruled. You may answer.

The WITNESS: What is the question?
(The last question was read by the reporter.)

By the WITNESS:
A. Yes.

By Mr. HOTCHKISS:
Q. And was a similar offer made to Mr. Hogan? A. Yes.
Q. Involving 2500 shares of stock? A. Yes.
Q. And was a similar offer made to Mr. Stouffer, but involving 500 shares of stock? A. Yes.
Q. And to your knowledge, Mr. Bieze, your best knowledge, did those persons, Mr. Samuels, Mr. Hogan and Mr. Stouffer, exercise the option in substantially the same manner that you did? A. Yes.
Q. Mr. Bieze, do you know who owned the 500 shares of stock on which your option ran prior to the time you asserted your option of it? A. I do not. I do not know.
1038 Q. You do not know? A. No.
Q You do not?
Mr. LYNTON: He said he did not know, Mr. Hotchkiss.
The COURT: He has answered.

By Mr. HOTCHKISS:
Q. Now, as to the stock on which Mr. Samuels asserted his option, who owned it immediately prior to his assertion of the option, do you know? A. I don't recall. It was either Yellow Cab or Waverly. I don't know which one.
Q. I read from Government's Exhibit 195, for purpose of refreshing your recollection. This is a letter dated December 19, 1935, signed by D. P. Green of the firm of Kirkland, Fleming, Green & Martin, to the Board of Directors of Chicago Yellow Cab Company, Inc., reading as follows:

"Gentlemen:

"You have requested our opinion as to the legality of the proposed sale to your managing officers of 6,000 shares of the Chicago Yellow Cab Company, Inc. now owned by the Waverly Corporation, and the sale to others of not to exceed 27,000 such shares
1039 also owned by the Waverly Corporation. We understand that all of the outstanding capital stock of the Waverly Corporation will be owned by Chicago Yellow Cab Company, Inc. at the time when such sales will be effected, or soon thereafter. Accordingly, for the purpose of this opinion, we will consider that the Waverly Corporation is a wholly owned subsidiary of Chicago Yellow Cab Company."

Now, I ask you, Mr. Bieze, whether the reading of that extract from that letter refreshes your recollection as to who owned the stock which Mr. Samuels, Mr. Hogan and Mr. Stouffer acquired under this option on December 19, 1935 or thereabouts? A. The Waverly Corporation.

Q. The Waverly Corporation. Now, you stated, Mr. Bieze, that you did not know who owned that stock on which you secured the option prior to the time you secured it. Does the reading of this letter refresh your recollection on that point? A. It does.

1040 Q. It does, and what is your answer? A. The Waverly Corporation.

Q. Thank you. Mr. Bieze, does the name Lee A. Kelley strike a responsive note in your memory? A. Having seen the name on the stockholders' list, that's all.

Q. The stockholders' list of what company? A. Of the Chicago Yellow Cab Company, Inc.

Q. Of the Chicago Yellow Cab Company, Inc.? A. That is right.

Q. Do you know when Mr. Kelley acquired his stock in the Chicago Yellow Cab Company, Inc., or approximately the time? A. As I recall it, it was probably on the late thirty-fives or early thirty-sixes. '36.

Q. I read from a Government Exhibit, No. 198, which is dated December 21, 1935, on the letterhead of Ewart, Scott, Kelley, Scott & Howard, barristers, solicitors, etc., Ottawa, Canada, addressed to the Waverly Corporation:

"Gentlemen:

"I beg to advise you that I am purchasing from you for a client of mine 24,287 shares of the capital stock of the Chicago Yellow Cab Company, Inc. at 12⅜s

1041 per share."

Did you ever see the letter, the original?

Mr. Lynton: May I see that, please?

Mr. Hotchkiss: Yes.

Q. Did you ever see that letter? A. Yes, I did.

Q. And approximately when did you first see the letter? A. I would say in December, '35.

Q. In December of '35? At that time, Mr. Bieze, did you have any knowledge concerning the relationship between Mr. Kelley and either the Checker Cab Manufacturing Company or the Parmelee Transportation Company if such a relationship existed?

Mr. Lynton: I object to the form of the question. I think he ought to ask whether he knows whether any relationship existed.

The Court: He may answer.

By the Witness:

A. No. I had no knowledge.

By Mr. Hotchkiss:

Q. I read to you from Government's Exhibit 195. I have previously read from that, that being a letter dated December 19, 1935 from D. P. Green of
1042 Kirkland, Fleming, Green & Martin to the Board of Directors, Chicago Yellow Cab Company. It states: "With respect to the sale of not to exceed 27,000 shares to others, we understand that the purchaser will not be an officer or director of the Waverly Corporation or any of its affiliates, and that no such officer or director will have any interest in such purchase."

"We understand, however, that the purchaser or his associates may own a minority stock interest in Chicago Yellow Cab Company, Inc. and may in some direct or indirect manner be associated with corporations which directly or indirectly own a substantial, though a minority, block of stock of Chicago Yellow Cab Company, Inc. We also understand that such sale will be a private sale and no offering of stock will be made either to the other stockholders or to the public, that by none of the transactions above mentioned will the respective purchasers or any group with which they may
1043 be said to be associated directly or indirectly acquire control of the Chicago Yellow Cab Company by virtue of such transactions."

Does the reading of that refresh your recollection in any manner as to the question I last put to you?

A. It does not.

1044 Q. It does not? A. No.

Q. I hand you Government's Exhibit 195 and ask you if you ever saw that before? A. As Secretary of the Company, I would naturally see this letter.

Q. You did? A. I did.

Q. You saw it at or following the date which appears on that letter? A. That is right.

Q. Does Mr. Kelly still own that stock in the Chicago Yellow Cab Company?

Mr. Lynton: You mean as a stockholder of record?

Mr. Hotchkiss: I will say.

Q. Is he still a stockholder of record in the Chicago Yel-

Cab Company? A. I would not know because I have looked at the stockholders list recently.

Well, the last time you looked at the stockholders was he a stockholder of record as of that time? A. He was.

Q. When was that, approximately? A. At the last annual meeting of the stockholders.

When was that meeting held? A. May, 1947.

As of that date, was he still a stockholder of record 24,287 shares? A. I don't recall.

You don't recall? A. No.

Mr. Bieze, the Government directed an interrogatory Chicago Yellow, among other companies. I will refer to Chicago Yellow, Government's Exhibit No. 210, ng:

"Concerning each annual meeting of your stockholders for each year 1929 to 1946, inclusive, state:

"1. The names of stockholders present in person and number of shares owned by each.

"2. State names of all stockholders owning more than 1,000 shares of stock represented by proxy, the amount of stock owned by each, and the names of each person or persons to whom the proxies of each such stockholder ran."

Government's Exhibit No. 219 in part is Chicago Yellow's answer to that interrogatory.

Mr. LYNTON: Mr. Hotchkiss, if you are just trying to blish what was the record ownership as of that par-ar date, the documents to which you refer are all in ence. What is the purpose of this inquiry?

Mr. HOTCHKISS: I am very sorry, but you will find out.

This Government's Exhibit No. 219 shows that in 1940, melee Transportation Company was represented by y, and had 75,920 shares and that L. A. Kelly was also esented by proxy and had 24,287 shares.

d the proxies of Parmelee and Mr. Kelly run to the e person? A. They did not.

They did not? A. No.

What persons did the proxies of Parmelee run to in— Maybe I misunderstood your question.

Mr. HOTCHKISS: Read the question.

Question read.)

Mr. HOTCHKISS:

Q. Did they? A. As I recall it, those proxies ran to Benjamin Samuels, Tom Hogan and a third party.

I do not recall who the third name was. It was a regular printed proxy that was sent out to the stockholders.

Q. It was a regular printed proxy? A. Yes.

Q. To your knowledge, during the period from 1936 to 1946, inclusive, where the stock of L. A. Kelly was voted by proxy and the stock of the Parmelee Transportation Company was also voted by proxy, were the proxies always directed to the same persons in each of those years?

Mr. Lynton: I object to that as too indefinite. It covers a broad territory. It asks how they were voted. We don't know how they were voted, by what means. I think it is much too general a question.

You have the records, anyway.

The Court: He may answer.

Mr. Hotchkiss: Will you read the question?

(Question read.)

By the Witness:

A. We issue a printed proxy which is addressed to me as Secretary of the Company, and those proxies,
1048 when they are executed, are mailed in and tabulated, so if they were executed, they must have been sent to me.

By Mr. Hotchkiss:

Q. And they were your standard proxy forms A. Standard proxies.

Q. That were filled in by L. A. Kelly?

Mr. Lynton: I object to that unless you mean that name happened to be on a particular proxy.

Mr. Hotchkiss: I will withdraw it.

Q. Did the standard proxy bear the name of L. A. Kelly in each year that a proxy was sent in? A. That is right.

Q. Did Parmelee Transportation Company likewise vote in the same manner? A. That is right. That is correct, to the best of my knowledge.

Q. Mr. Bieze, I direct your attention now to the Transportation Maintenance Company, or Corporation. Does that name strike a responsive note in your memory? A. It does.

Q. Do you know when that company was organized,
1049 or approximately when? A. 1938.

Q. And do you know who the major stockholders in that company were at that time? A. We were a substantial stockholder.

Q. When you say "we", to whom do you refer? A. Chicago Yellow Cab Company.

Q. You say now it is Chicago Yellow, not Yellow? A. That is right, the parent company.

Q. You say the parent company? A. Chicago Yellow Cab, Inc., is the parent company. They were the stockholders in the Transportation Maintenance Corporation.

Q. I am not quite sure what your statement refers to. Is Chicago Yellow the parent of Yellow, or the parent of this Transportation Maintenance? A. The parent of Yellow.

Q. And it is a stockholder in the Transportation Maintenance Company? A. Yes, sir.

Q. In 1939, approximately what percentage of the stock of Transportation Maintenance Company did Chicago Yellow own, if you know? A. As I recall it, 49 per cent.

Q. Do you know who the other stockholders were?

1050 A. I don't know.

Q. You don't know? A. No.

Q. You never heard? A. No.

Q. You never heard? A. I did hear.

Q. You did hear? A. Yes, I did hear.

Q. All right, what did you hear?

Mr. LYNTON: I object to that. Incidentally, we have these stock ownerships of record here.

Mr. HOTCHKISS: All right. I want to know what Mr. Bieze knows.

Mr. LYNTON: I think it is entirely immaterial.

The COURT: He may answer.

Mr. HOTCHKISS: Read the question.

(Question read.)

By the WITNESS:

A. Checker and Parmelee were stockholders.

By Mr. HOTCHKISS:

Q. Checker and Parmelee? A. Yes, sir.

Q. Do you know for what purpose the Transporta-

1051 tion Maintenance Company was set up in 1938?

Mr. LYNTON: I object to the form of the question.

The COURT: Sustained.

By Mr. HOTCHKISS:

Q. Do you know what type of business the Transportation Maintenance Company engaged in after its organization in 1938? A. Repairing of taxicabs and automotive equipment.

Q. Did it do that repair work for Yellow Cab Company? A. It did.

Q. Prior to 1938, Yellow Cab had done its own repair and maintenance work, had it not? A. That is correct.

Q. Now, what facilities were set up for the Transportation Maintenance Company to do this repair work and other work? What facilities were set up for it to use? A. I don't know what you mean by what facilities.

Q. Well, did it have a garage or plant where it did the repair work on Yellow Cabs? A. It leased garage space from the Yellow Cab Company.

1052 Q. It leased garage space from the Yellow Cab Company? A. Yes, sir.

Q. Was that garage space the same space which Yellow Cab had prior to 1938 been using in doing its own repair work? A. That is correct.

Q. And did the Transportation Maintenance Company hire the same employees who had been previously employed by Yellow in doing its repair and maintenance work? A. I don't know.

Q. You don't know that? A. No.

Q. Now, do you know whether, after Transportation Maintenance Company started operations, Yellow Cab Company released from employment those workers who had previously been working for Yellow and doing cab repair and maintenance work? A. That is correct.

Q. They did? A. They did.

Q. Do you know whether those same workers or some of them were then hired by Transportation Maintenance Company?

1053 Mr. Lynton: Will you break your question up into two parts?

Mr. Hotchkiss: Will you read the question?

(Question read.)

By the Witness:

A. Some of them were.

By Mr. Hotchkiss:

Q. Now, Mr. Bieze, I direct your attention now to the period after 1938. Were the cabs of companies other than Yellow repaired and maintained by Transportation Maintenance Company in these garage facilities which Yellow leased to the Maintenance company, if you know? A. Yes.

Q. What other companies, if you know? A. Checker, Parmelee and private automobiles, private passenger automobiles.

Q. By that you mean— A. I, as an individual, if I wanted

some repairs made to my car, I could take it there for repairs.

Q. Are you speaking of yourself as an individual
1054 who happened to be— A. As any individual.

Mr. Lynton: You, too, Mr. Hotchkiss.

By Mr. Hotchkiss:

Q. And I also could bring my car in to have it repaired, is that correct? A. Yes, sir.

Q. Do you have any knowledge, Mr. Bieze, as to the proportion of the total volume of repair business done by Transportation Maintenance Company which consisted of private business, if you know? A. I don't know.

Q. You cannot make an estimate on it? A. No.

Q. Mr. Bieze, do you happen to be either an officer or a director of Transportation Maintenance Company? A. No.

Q. You never have been? A. No.

Q. Mr. Bieze, do you know whether the Checker Cab Manufacturing Company, during the period from 1935 to 1946, inclusive, carried a stock of parts, repair parts, for use in repairing cabs which it had sold, if you
1055 know? A. I don't know.

Q. Mr. Bieze, prior to 1938, when Yellow was doing its own maintenance and repair work on its cabs, was Yellow using cabs manufactured by the Checker Cab Manufacturing Company? A. It was.

Q. Now, in the event the repair department needed parts for the repair work, where would it get those parts?

Mr. Lynton: Will you read that question back, please?

(Question read.)

By Mr. Witness:

A. There might be any number of places.

By Mr. Hotchkiss:

Q. Would it get those repair parts from Checker Cab Manufacturing Company? A. I don't know.

Q. You don't know? A. No, I don't know.

Q. Mr. Bieze, reference has been made in testimony previously given in this case to Government's Exhibit 344, which is a letter dated June 4, 1943, from Secretary
1056 of R. E. Oakland to Mr. Bieze, Treasurer of Yellow Cab Company. It says:

"Dear Mr. Bieze:

"In our phone conversation today, Mr. Oakland instructed me to send you the enclosed green book on Cab Sales and Parts Corporation."

Mr. Bieze, did you receive such a book? A. I did.

Q. What was the nature of that book?

Mr. LYNTON: If he knows.

By Mr. HOTCHKISS:

Q. If you know. A. Taxicab statistics.

Q. On what company? A. Checker Taxi.

Q. Had you received similar statistical information in the preceding year, which would be 1942? A. I don't recall.

Q. I said similar statistical information.

Mr. LYNTON: I object to the form of the question.

Mr. HOTCHKISS: The witness has already testified that the information related to Checker.

Mr. LYNTON: By the word "similar", do you mean Checker?

1057 Mr. HOTCHKISS: Yes, I am referring to Checker.

The COURT: He may answer.

By the WITNESS:

A. I don't recall.

By Mr. HOTCHKISS:

Q. Did you in 1941? A. I would not recall.

Q. Would you recall? A. I don't recall.

Q. I asked you a question, Mr. Bieze. You can state yes or no, or you don't recall. A. I don't recall.

Q. You don't recall? A. No.

Q. You do recall this particular episode on which there is a letter in evidence? A. That is correct.

Q. Now, in 1944, the year after this letter, did you receive such a Green Book relating to the statistics of Checker? A. I don't recall.

Q. You don't recall that? A. No.

1058 The COURT: The Court will recess now.

(Thereupon a recess herein was taken until the hour of 2:00 o'clock p. m. of the same day, Wednesday, June 2, 1948.)

1059 No. 46 C 1339

UNITED STATES OF AMERICA, PLAINTIFF,

vs.

YELLOW CAB COMPANY, *et al.*, DEFENDANTS.

Before Judge LaBuy
Wednesday, June 2, 1948,
2:00 o'clock p. m.

Court met pursuant to recess.

Present:

Mr. Hotchkiss
Mr. Williams
Mr. Lynton
Mr. Ginsberg
Mr. Fuller
Mr. Climenko

RUDOLPH H. BIEZE, a witness on behalf of the Government, resumes the stand and testified as follows:

Direct Examination (Ctd.).

By Mr. HOTCHKISS:

Q. Mr. Bieze, I am reading from Government's Exhibit 346, consisting of a letter from yourself to Mr. Morris Markin, and reading:

"As per our telephone conversation, I am enclos-
1060 ing herewith two photostatic copies of the Brown Book. Inasmuch as we had only one copy, photostatic copies were made. I thought you might want an additional copy."

What is the Brown Book? A. It is statistics on operation of the Yellow Cab.

Q. Yellow Cab exclusively? A. Yes, sir.

Q. Mr. Bieze, I now hand you what has been marked for purposes of identification as Government's Exhibit No. 378. It bears down in the lower righthand corner the symbols 4-120-P, which indicates on the basis of testimony previously given that it came from the files of the Parmelee Transportation Company.

I hand you that exhibit, so marked for purposes of identification, and ask you if you ever saw the original of that exhibit or a copy of the original of that exhibit? A. I had seen a copy of this.

Q. Could you place the approximate date at which you saw the copy of it? A. I would say after the strike of March, 1937.

1061 Q. After the strike of March, 1937? A. Yes, sir.

Q. Do you recall where you saw the copy? A. I would say in my office.

Mr. Hotchkiss: I offer at this time Government's Exhibit No. 378.

Mr. Lynton: I object to it. I do not think you have made it competent. You have asked him if he ever saw a copy of it.

Mr. Hotchkiss: The document itself, and the material in it shows the nature of it, and shows that it was a document drawn up in connection with the business of the Yellow Cab Company.

Mr. Lynton: Who drew it up? If we could identify it for you, we would do so.

By Mr. Hotchkiss:

Q. Do you know who drew it up? A. No, sir, I did not.

Q. You didn't draw it up? A. I did not draw it.

Q. Mr. Samuels did not draw it, or don't you know? A. I don't know.

1062 Q. Was there a copy of this in your files? A. I imagine so.

Q. As of that date, about the time of this strike in 1937? A. If there was a copy, your department would have seen the copy.

Q. I am asking you. A. Well, I imagine there was one.

Q. You said you had seen a copy? A. I had seen it, yes.

Q. So far as you know, that was in the files of your company? A. I didn't say that.

Mr. Lynton: He did not say that.

By Mr. Hotchkiss:

Q. Was it? A. I don't recall of it being in our files.

Q. Under what circumstances did you see that copy? A. In a general discussion of the affairs of the company, of the Yellow Cab Company.

Q. Who was present during the course of that discussion? A. Mr. Samuels, Mr. Hogan and myself.

Q. Anybody from Checker Cab or Cab Sales pres-
1063 ent? A. No, sir.

Q. And at that time you discussed this or a copy of this? A. That is right.

Q. Was that document the basis of your discussion?

Mr. Lynton: I object to the form of the question.

The Court: He may answer.

By the Witness:

A. There was a general discussion of the business affairs of the Yellow Cab Company in connection with the after

effects of the strike that happened here in Chicago in March, 1937, in connection with the inability of the drivers to make a living.

By Mr. HOTCHKISS:

Q. You were concerned solely with the inability of the drivers to make a living? A. Practically.

Q. During the course of the discussion, did you discuss the proposal set out in the copy of this memorandum?

Mr. LYNTON: I object to the form of the question. You can ask him—

By Mr. HOTCHKISS:

1064 Q. Did you discuss the proposals that were set forth, or the matters set forth in this exhibit?

Mr. LYNTON: I object to that. You can ask him whether he discussed that document.

Mr. HOTCHKISS: I have asked a question.

The COURT: He may answer.

Mr. LYNTON: I object to the form of the question.

The WITNESS: May I look at the document?

Mr. LYNTON: I wish the Court to instruct the witness, if I may ask the privilege, that he distinguish between the topic that is in that memorandum and the topic of discussion, as distinguished from the discussion of that particular document.

Mr. HOTCHKISS: Will you read the question?

The COURT: I think the question is clear. Let the witness read the letter and then answer the question.

(Question read.)

By the WITNESS:

A. Shortly after the strike there was a general discussion in connection with the results of the strike and the inability of the drivers to make a living.

1065 Mr. HOTCHKISS: I request that that answer be stricken as not being responsive to the question.

Mr. LYNTON: I suggest that it is.

The COURT: He has not completed his answer yet. Let him complete the answer first and then I will rule.

The WITNESS: And later this proposal was discussed.

By Mr. HOTCHKISS:

Q. This proposal was discussed?

The COURT: What proposal?

The WITNESS: This proposal here.

By Mr. HOTCHKISS:

Q. Set forth in Government's Exhibit 378? A. Yes.

Mr. Hotchkiss: I offer Government's Exhibit No. 378.

Mr. Lynton: I have no objection to its admission since it was the subject of discussion, but I do object to the competency, with respect to any statement therein contained. In other words, I am making a distinction as to the application—

By Mr. Hotchkiss: Your Honor, the Government can make no showing as to what person drew this
1066 document up. The Government has presented evidence showing that one copy of this particular exhibit came from the files of the Parmelee Transportation Company. The witness has testified that he and the officers of Yellow had another copy of this same document and discussed it, and it was the subject of negotiation. The document itself shows on its face, coupled with the testimony that has already been given—

The Court: I have not seen it. Is it signed by somebody?

Mr. Hotchkiss: It is not signed.

The Court: Well, I think the Court should allow it for the limited purpose showing that the matters therein contained were the matters that were being discussed at that meeting.

Mr. Lynton: To that extent, I have no objection.

The Court: It may be received for that limited purpose.

(Said document, so offered and received in evidence, was marked Government's Exhibit 378.)

1067 Mr. Hotchkiss: I read Government's Exhibit 378:

"Reference had to a letter dated June 14, 1937, addressed by Levin Rank to the Board of Directors, in which the position of the company with reference to its labor and other operating problems, is set forth in detail. Acting on the suggestion contained therein, your officers have conducted a series of negotiations with the company's chief competitor and had before them for consideration the following proposal:

"That Sales & Parts Corporation calls its subsidiary, Checker Taxi Co. to join with this company in asking the municipal authorities to reduce the number of outstanding licenses from 4,108, the present number, to a figure not in excess of 3,000 licenses.

"In the event that the proper municipal authorities take appropriate action, with respect thereto, that Sales & Parts Corporation cause its subsidiary, Check-

er Taxi Co., to surrender 500 of the 1,500 licenses now standing in its name.

1068 "That this company also agrees to surrender 666 of the 2,166 licenses now standing in its name.

"That in consideration for the surrender of the 500 licenses now standing in the name of Checker Taxi Co., that Cab Sales & Parts Corporation receives from this company the sum of $275,000 payable in equal annual installments of $55,000 each, payable on October 1, 1937, and on October 1st of each year thereafter until the total sum of $275,000 is paid; that Cab Sales & Parts Corporation direct that such moneys as they are to receive under this agreement be paid over to The First National Bank of Chicago, as Trustee, for the notes of Cab Sales & Parts Corporation, now held by this company and/or its affiliates.

"That as a further consideration, all maturities of such notes be extended to October 1, 1942, and that the interest rate thereon be reduced to 3 per cent per annum, as of October 1, 1937. The same interest rate shall be continued to the due maturity date, namely, October 1, 1942.

1069 "The aforesaid payment of $275,000 total is based upon a computation of $550 for each license surrendered, and it is understood and agreed between the parties that in the event Checker Taxi Co. is unable, prior to October 1, 1937, to surrender the full 500 licenses, payment shall be computed based on the number of licenses actually surrendered and Checker Taxi Co. shall have a reasonable length of time thereafter to effect the cancellation of the said licenses up to 500.

"It is further understood between this company and Checker Taxi Co. that in the event the taxi business in Chicago requires an additional number of taxicabs after the surrender of the licenses, as hereinabove expressed, that said licenses shall be restored in the following proportion at all times—60 per cent to Yellow Cab Co. and 40 per cent to Checker Taxi Co."

1070 Q. Mr. Bieze, I now call your attention to Government's Exhibit 396, excerpts appearing at page 426 of the excerpt book. This is a letter dated August 9, 1945 from yourself to Oakland, Vice President and Treasurer of Checker Cab Manufacturing Company, and states:

"We are attaching herewith a list showing the total number of licenses, months and years in which new

cabs were received, and also showing models. You will note this list covers all the model Checker cabs acquired since May, 1929. There is also enclosed herewith list showing the number of licenses for the years 1929 to 1941."

This exhibit, the attachment to this exhibit shows that on May, 1929, 230 new cabs of Model K-6 were received by Yellow. What make of cars had been used by Yellow prior to that time?

Mr. Lynton: From the beginning?

By Mr. Hotchkiss:

Q. Prior to May, 1929, immediately prior? A. Buicks and Yellow Trucking Coach cabs.

Q. Buicks and Yellow Trucking Coach cabs?

1071 A. Yes.

Q. During this exhibit that I have just referred to and immediately prior to May, 1929, did Yellow have any cabs which were manufactured by Checker Cab Manufacturing Company? A. No.

Q. The exhibit I have referred to, No. 396, shows that during the year 1929 Yellow received 1,035 K-6 cabs. Mr. Bieze, could you state what was done with the older cabs as these new cabs came to Yellow? What was your practice? A. Principally sold as junk.

Q. The old cabs were sold as junk? A. Yes.

Q. And were replaced with the new cabs? A. Yes.

Q. This document shows that during 1930, each month thereafter except December, these cabs were delivered, for a total during that year of 1,165 cabs of the K-7 model. Those were all cabs manufactured by Checker Cab Manufacturing Company? A. Correct.

Q. And as these new cabs came, the old model cabs, the old cabs you had had prior to May of 1929,

1072 were sold or scrapped as junk? A. Right.

Q. The exhibit further shows that during 1931, during the months of November and December, Yellow received a total of 1,000 cabs. The exhibit further shows that the next deliveries of cabs or receipt of these cabs occurred in August of 1935. A. Correct.

Q. During that interim, Mr. Bieze, from January of 1932 when Yellow received one cab from Checker, to August of 1935, did Yellow purchase cabs from any other company, other than CCM, Checker Cab Manufacturing? A. No.

Q. During 1935, starting in August, this document shows that Yellow received 1,000 cabs, and in the next year, 1936, starting in May and continuing on to March of 1937, received 650 for a grand total during that period of 1,650 cabs, all of Y-1 and Y-2 models. During that period what did you do with the preceding batch of cabs that you had purchased from Checker? A. They were worn out and principally sold as junk.

1073 Q. They were all worn out? A. Yes.

Q. And sold as junk? A. That is right.

Q. So that as of May, 1937, when the last cabs of the purchase of 650 cabs was completed, all of those preceding cabs had been junked? A. No.

Mr. LYNTON: That is not the statement. The replaced cabs.

By Mr. HOTCHKISS:

Q. The replaced cabs had been junked? A. Yes.

Q. I refer to Government's Exhibit 398(a), and there is a statement in connection with this exhibit—

Mr. LYNTON: Will you identify it, Mr. Hotchkiss, for the record?

Mr. HOTCHKISS: Yes. It is page 426 of the excerpts.

Q. Just immediately prior to the table A, Cabs in Operation, which I am going to refer to, there is the statement: "The following table shows the average number of

1074 cabs operated by the Yellow Cab Company, by months." This shows that in March of 1937 Yellow Cab Company operated 1,650 cabs. In March of 1937, it is a fact, is it not, that the Yellow Cab Company had 2,166 licenses from the City of Chicago to operate taxicabs? A. Correct.

Q. Had the Yellow Cab Company paid license fees on the 2,166 licenses? A. It did.

Q. At that time was it necessary for these cabs to carry state licenses? A. They did.

Q. And did the Yellow Cab Company secure 2,166 state licenses? A. It did.

Q. You had 1,650 cabs in operation?

Mr. LYNTON: That was an average, on the streets of Chicago.

Mr. HOTCHKISS: It states here, the number of cabs in operation.

Mr. LYNTON: I think if you will look back you will find, "Average number of cabs in operation."

Mr. Hotchkiss: "The following table shows the average number of cabs operated by the Yellow Cab
1075 Company—"

Mr. Lynton: That is right.

Mr. Hotchkiss: "—by months."

Mr. Lynton: Now, we have it clear.

By Mr. Hotchkiss:

Q. We have for the month of March, 1937 the average of 1,650. You had licenses on 2,166. The difference between the 1,650 cabs, the average operation, and the 2,166 licenses that were secured, did you at that time have any cabs— A. We did.

Q. —on which you could secure licenses?

Mr. Lynton: If your Honor please, I object to the form of the question. It is based on a prior statement of Mr. Hotchkiss and I believe it is misleading in its content. There is no testimony here whatever that there were not 2,166 cabs available for operation. All that you have got is during a particular month an average number was put on the streets of Chicago.

Mr. Hotchkiss: Your Honor, on that point I should point out that the witness, Mr. Bieze, an officer of Yellow, had testified that as of March, 1937, the date the
1076 last batch of replacement cabs have been purchased from Checker Cab Manufacturing Company, the cabs that they replaced had been scrapped, destroyed, sold.

Mr. Lynton: That is not the testimony at all. That is a complete misconstruction. You asked the witness—

Mr. Hotchkiss: Read the testimony.

Mr. Lynton: The testimony speaks for itself.

The Court: Probably by asking the witness another question it will clear it up better than to go back so far. Follow this up.

By Mr. Hotchkiss:

Q. Proceeding further, Mr. Bieze, as of March, 1937, with this Exhibit 398 shows that the average number of cabs operated on the streets of Chicago by Yellow was 1,650 and you had 2,166 licenses, I am asking you whether you had the equipment to secure licenses for the difference between the 1,650 cabs in average operation—

Mr. Lynton: I object to the form of the question.

By Mr. Hotchkiss:

Q. —and the 2,166 licenses that you had?

Mr. Lynton: I object to the form of the question. Why

1077 don't you ask the witness whether he had equipment for 2,166 licenses?

The COURT: What do you mean by "equipment"? Do you mean cabs?

Mr. HOTCHKISS: Cabs.

The COURT: All right. You may answer.

Mr. LYNTON: Why don't you ask him the direct question?

By Mr. HOTCHKISS:

Q. You may answer. A. We did have.

Q. You did have? A. We did.

Q. Did you have equipment for 1,650 A cabs?

Mr. LYNTON: I don't understand.

By Mr. HOTCHKISS:

Q. Model A cabs?

Mr. LYNTON: The witness has just said he had cabs for the whole 2,166 licenses.

Mr. HOTCHKISS: I want to find out some more about this situation.

Mr. LYNTON: Go to it.

Mr. HOTCHKISS: If you don't mind.

Mr. LYNTON: But I don't understand the question.

1078 The COURT: I don't understand the question either. What do you mean by-"equipment for the A cabs"? By "equipment," I thought you meant cabs.

Mr. HOTCHKISS: Yes.

Q. You had 1,650 of the Model Y Checker cabs, is that correct? A. Correct.

Q. On which you had secured licenses? A. Correct.

Q. As to the additional cabs on which you secured licenses, what model cabs were those? A. Model K's and M's, as I recall it.

Q. And were you operating those Model K cabs on the streets starting with March of 1937? A. No, we did not.

Q. And for how long a period prior to March, 1937 had you not operated Model K cabs, do you recall? A. I don't recall.

Q. Had it been for several months? A. Up to the time of the strike in March, 1937 we were operating around 2,166 cabs.

Q. What was that, again? A. Up to the time of the strike, we were operating approximately 2,166 cabs.

1079 Q. For the purpose of refreshing your recollection, I call your attention to Government's Exhibit 398-A.

"State the average number of cabs in operation in 1936."

"The highest number in operation in any single month was 1,719; the lowest number being 1,325."

Do you still say that you had—was it 2,100-odd cabs in operation?

Mr. LYNTON: I object to this on several grounds.

First of all, he is arguing with the witness.

Secondly, the witness has answered.

And thirdly, he is misquoting the statistics.

The COURT: Sustained.

By Mr. HOTCHKISS:

Q. Now, in March of 1937, Mr. Bieze, isn't it true that the last model M6 cabs that you had purchased, that Yellow had purchased, were over five years old? A. That is correct.

Q. Now, in March of 1937, this exhibit shows that Yellow was operating 1,650 cabs. Were any of those
1080 cabs the model M cabs?

Mr. LYNTON: Have you finished your question?

Mr. HOTCHKISS: So far as you recall.

Mr. LYNTON: I object to the question. It is coupled with a misleading statement, and it is a misquotation of the document, and you are putting implications in the question.

Mr. HOTCHKISS: The top of the column shows the number of cabs in operation.

Mr. LYNTON: You have discussed before that is the average number placed on the streets.

Mr. HOTCHKISS: I have said that is what the exhibit shows.

Mr. LYNTON: 2,166 is the average number running on the streets. Why don't you ask him—

Mr. HOTCHKISS: You have in March of 1937 this average number, 1650 cabs in operation on the streets of Chicago.

Q. Now, I ask you whether in March of 1937 any of the model M6 cabs which had been purchased in 1931 and 1932 were in operation on the streets of Chicago? A. They were available for operation.

1081 Q. Were they in operation? A. They were available for operation.

Mr. HOTCHKISS: Your Honor, I ask that the witness be instructed to answer the question.

The COURT: It calls for a direct answer. Answer the question, were they in operation?

By the WITNESS:

A. No.

By Mr. HOTCHKISS:

Q. You had licenses on them?

Mr. LYNTON: I object to the question as argumentative. You are just trying to argue with this witness from beginning to end.

By Mr. HOTCHKISS:

Q. I say, you did have licenses on them, did you?

The COURT: He may answer.

Mr. LYNTON: He has testified to that, your Honor, at least six times.

Mr. HOTCHKISS: He did?

Q. Now, these model M6 cabs that had been purchased back in 1931 and 1932 you said were available for operation in March of 1937. Where were they kept? A. In our garages and in storehouses.

Q. How many garages were they kept in? A. Each garage had a few of them stored.

1082 Q. How many garages did you operate? A. We were operating ten at that time.

Q. How many storage houses? A. Two.

Q. There were cabs in each one of those? A. Yes, sir.

Q. Now, were those cabs in a complete state of repair? Had they been repaired? A. They had been repaired.

Q. At what time had they last been repaired with reference to March, 1937? What was the last date that they had gone through a general overhauling? A. Right up to the time we received new equipment.

Q. Up to the time you received new equipment. That would be— A. March, 1937.

Q. August, 1935.

Mr. LYNTON: He has given the answer.

By Mr. HOTCHKISS:

Q. Is that right? A. March, 1937, when the last of the model Y's came in.

1083 Q. And as of March, 1937, on that date, all of those cabs had been reconditioned and put in sound operating condition? A. They were maintained and repaired as they needed repairs and maintenance.

Q. I asked as of that date.

Mr. LYNTON: He has answered.

By Mr. HOTCHKISS:

Q. Were they actually operated after that date?

Mr. LYNTON: Oh, if your Honor please, I think he is going over the same ground again and again.

Mr. Hotchkiss: No, I am asking with reference to March, 1937.

Mr. Lynton: You have asked about that.

Mr. Hotchkiss: Here are cabs over five years old.

Mr. Lynton: Let us not argue about it.

By Mr. Hotchkiss:

Q. According to the testimony of the witness, I am asking him whether as of March of 1937 Yellow operated this M6 cabs which had been purchased in 1931 and 1932.

Mr. Lynton: That question has been answered.

Mr. Hotchkiss: He has not answered that question.

1084 The Court: He may answer.

By the Witness:

A. No.

By Mr. Hotchkiss:

Q. Mr. Bieze, Government's Exhibit 396 shows that in December, 1941, Yellow received the last of an order totaling 1450 model A cabs, and the first of those cabs were delivered starting in May of 1940.

Now, as the model A cabs were delivered, starting in May of 1930, what did Yellow do with the model M cabs we have just been discussing? A. Sold them principally for junk.

Q. Did Yellow between the date of March, 1937, and April of 1940 purchase any cabs; and if you desire to refresh your recollection, I will show you this document. A. What dates were those?

Q. The date of March of 1937 and April, 1940. A. It did not.

Q. Mr. Bieze, as of December, 1941, Government's Exhibit 396 shows that you had 1,450 model A cabs. It is true at that time you had 1,595 licenses? A. Correct.

1085 Q. Will you explain why Yellow Cab did not purchase 1,595 model A cabs? A. Because we had 145 model Y's on hand.

Q. You had 145 model Y's on hand? A. Yes, sir.

Q. Now I refer you to December of 1941. This Government's Exhibit No. 398-A shows that in that month the average number of cabs operated by Yellow was 1,338.

Did you during that month operate any of the model Y cabs? A. We did not.

1086 Q. Did you during 1941 operate any of the Model Y cabs? A. Yes, we did.

Q. What was the last date on which you operated the

Model Y cabs? A. When we received the last of the Model A's.

Q. Which was December of 1941? A. Correct.

Q. And in 1942 you did not operate the Model Y? A. Did not.

Q. You maintained them in a standby condition? A. Correct.

Q. Did you operate those 154 Model Y cabs in 1943? A. We did not.

Q. In 1944? A. No.

Q. In 1945? A. No.

Q. In the first six months of 1946? A. We did not.

Q. Did you maintain your licenses? A. We did.

Q. On those during the whole period of time? A. We did.

1087 Q. Mr. Bieze, I am going to direct your attention to an answer by Yellow to one of plaintiff's interrogatories, Plaintiff's Interrogatory No. 5, which is in evidence as Government's Exhibit 452, which asks, among other things:

"(b) The number of motor vehicles for use as cabs purchased by you from other than CCM during—"

And there are set out designated periods of time.

Government's Exhibit 453 is Yellow's answer to that interrogatory. I call your attention particularly to the answer 5(b), Yellow's answer, which states that in 1945 Yellow purchased 172 cabs from companies other than Checker Cab Manufacturing Company. Do you recall what company those 172 cabs were purchased from? A. As I recall it, there were some of them purchased at Quincy, Illinois, possibly some out at Pittsburgh, some out at New York. They were used Model A taxicabs.

Q. They were all cabs which had originally been manufactured by the Checker Cab Manufacturing Com-

1088 pany, is that correct? A. Correct.

Q. Thank you. Now, the same holds true with the three which are set forth in Yellow's answer as having been purchased from companies other than CCM in January and February of 1946? A. That is correct.

Q. You mentioned companies in New York, or you mentioned, I believe, generally, from New York and Pittsburgh. Do you recall the particular company that those cabs were purchased from in New York? A. No, I don't recall the name.

Q. Would it refresh your recollection if I used the name National Transportation Company? A. It is possible we got some from them.

Q. Mr. Bieze, I am going to ask you now for a word of explanation as to two exhibits. I read you Government's Exhibit 404, a letter dated October 17, 1944, from a Danny, addressed to Dear Rudolph. Are you known as Rudolph? A. Yes.

Q. It reads as follows:

"M. M. recently asked me to send you a list of serial numbers, etc. of 175 vehicles that are presently ware-
1089 housed by us. Such a list is enclosed, and it totals 135 cabs. Is this action sufficient for your needs?

"Regards,

"Danny."

I show that to you and ask you whether you are the Rudolph to whom that letter was addressed? A. That's me.

Q. Who is the M. M. referred to? A. I don't know whether that is M. M. or not here. It is not very distinct.

Q. What do you think it is? A. If it is M. M., it could be Morris Markin.

Q. It could be Morris Markin? A. Yes.

Q. If it is M. M.? A. Yes.

Q. Next I read Government's Exhibit 405 which is a letter from R. H. Bieze to Mr. Markin, Morris Markin:

"Dear Mr. Markin:

"In accordance with your instructions, Danny sent me a list of serial numbers, etc. on 175 vehicles that
1090 are presently warehoused. Is it agreeable to you that I send Mr. Dannemann the enclosed (copy) letter?"

At the bottom of this exhibit is a notation:

"Mr. R. H. Bieze: I see no reason why you shouldn't send the attached letter to Mr. Dannemann. M. Markin."

The third letter is Government's Exhibit 406, letter from R. H. B., R. H. Bieze, to Mr. Dannemann, National Transportation Company, Inc.:

"Dear Danny:

"I have your letter of October 17, 1944 together with the serial numbers, etc. on 175 vehicles. In order for us to make application for the state licenses it is absolutely necessary that we receive from you the state title for 149 Model A cabs. Would you be good enough to forward these to us at your earliest convenience?"

That is dated November 1, 1944. When did you ordinarily renew your licenses on cabs for Yellow?

Mr. LYNTON: Just a moment. Are you going to
1091 put a question based on these readings that you have made?

Mr. HOTCHKISS: Yes.

Mr. LYNTON: You are?

Mr. HOTCHKISS: Yes.

Mr. LYNTON: Will you put it, please?

Mr. HOTCHKISS: I have started.

Mr. LYNTON: I move to strike it out because I don't think it has anything to do—

The COURT: Sustain the objection as to the form of the question. The latter part of the question is all right, as to the time that it was customary for them to obtain licenses. That may stand.

By Mr. HOTCHKISS:

Q. Did Mr. Dannemann send you a state title on 149 Model A cabs? A. He did.

Q. The state title that is referred to here, is that a New York State title? A. Correct.

Q. The title on those 149 cabs went to what company? A. Yellow Cab Company, Chicago.

Q. And from what company? A. National Transportation Company.

1092 Q. The National Transportation Company then had had the title to these 149 cabs, is that correct, prior to November or about November 1, 1944? A. Right.

Q. And at that time, at the time the state titles were sent to Yellow, where were these 149 Model A cabs located? A. Model Y's.

Q. Model A cabs referred to in this letter, where were they located? A. As the letter states, in the warehouse in New York.

Q. They were located in a warehouse in New York. Were they thereafter sent to Yellow in Chicago? A. They were.

Q. When did that occur? When were they sent? When were the cabs sent to Yellow?

Mr. LYNTON: Give the man a chance to answer. He is trying—

The WITNESS: The 149?

By Mr. HOTCHKISS:

Q. The 149 cabs. A. In December, as I recall, December, 1945.

Q. Were they driven to Chicago or were they sent
1093 by train, do you recall? A. A drive-away company would naturally handle them.

Q. I asked you the question. A. A drive-away company handled them.

Q. Thank you. And in December, 1945 they were received? A. Yes.

Q. Mr. Bieze, another question or two about these 149 Model A cabs: Did you shortly after November 1, 1944 register this state title on the 149 cabs in Illinois? A. We did.

Q. And did you shortly thereafter secure state license plates on those cabs? A. We did.

Q. And did you shortly thereafter secure city licenses on them? A. We did.

Q. And you paid all the license fees and so on? A. We did.

Q. When you received these 149 state licenses on cabs warehoused in New York, what did you do with the
1094 145 Model Y cabs which were warehoused in Chicago? A. We were directed by the Office of Defense Transportation to disassemble those 145 cars and use the parts on the Model A's to keep the cabs running.

Q. So the 145 were disassembled, were they? A. Disassembled.

Q. And the parts were used to keep the Model A's running? A. Correct.

Q. Did you secure licenses on the 145 cabs after they were disassembled? A. We did not.

Q. Now, Mr. Bieze, I direct your attention to a period of time shortly prior to March, 1946. I will make the time more specific. A period of time between January 1, 1945 and March of 1946. Is that clear? A. Yes.

Q. During that period of time Government's Exhibit 334 shows that you directed and offered to Checker Cab Manufacturing Company on August 15, 1945 to purchase for replacement purposes 1,595 purpose-built Check-
1095 er taxicabs. During that period of time up to—

Mr. Lynton: Just a moment. Are you going to put a question on that?

Mr. Hotchkiss: I am going to put a question on that.

Q. During the period of time between the writing of that letter, August 15, 1945, and March, 1946, did the Checker Cab Manufacturing Company make any delivery of cabs to you? A. No.

Q. Did you secure cabs from any other companies other than the cabs that we have already discussed, the 172 cabs,

the three cabs, from New York, Pittsburgh and Quincy?
A. Yes, as I recall it, two cars, a Hudson and a Packard.
Q. Did you make an attempt to purchase? A. We did.
1096 Q. On what date, approximately? A. Shortly after the war was over, about August, 1945.
Q. In August of 1945? A. Yes, sir.
Q. Will you describe just what attempt you did make to secure, start with the Hudson? A. By contracting various dealers throughout the city of Chicago.
Q. Dealers in the city of Chicago? A. Yes, sir.
Q. What offers did you make to the dealers?
Mr. LYNTON: I object to that. He did not testify that he made an offer.
The COURT: State what the negotiations were.
By Mr. HOTCHKISS:
Q. What were your negotiations? A. We started to—
Q. With Hudson? A. To purchase these passenger automobiles. We were able to receive two of them, and the dealers said they could not sell us any automobiles. We didn't have anything to trade in, and that their allotment was so small they would be unable to
1097 help us out. We then had our attorneys contact the Office of Price Administration, and in the rules and regulations of the OPA, there was a clause to the effect that you could rent automobiles on the basis of $100 a month. A directive was issued by the Office of Price Administration to various dealers in Chicago that they had the approval of the Office of Price Administration to sell automobiles to us on that basis, on the basis of $100 a month.
Q. When did this directive issue? A. Just before the freeze was lifted, and I believe it was in November, 1946 when the freeze was lifted.
Q. November of 1946? A. Yes. This thing was just being worked out when the freeze was lifted. Up to the time of the freeze, we were able to receive three automobiles on the lease basis, and then with that the various dealers throughout Chicago started to give us some automobiles on an outright basis.
Q. Now, let us restrict ourselves. My question was restricted to the period prior to March of 1946.
1098 Mr. LYNTON: You don't want to go beyond that?
Mr. HOTCHKISS: I am asking for the period prior to March of 1946.

A. We were unable to receive any more than two automobiles.

Q. Now, those two automobiles were received prior to March of 1946? A. As I recall it, yes.

Q. And they were received from Hudson? A. One was a Hudson and one was a Packard.

Q. Did you, prior to March of 1946, attempt to purchase used cars to use for taxicab purposes? A. We did, but those that were available were not suitable for our operation.

The Court: The court stands recessed for fifteen minutes.

(Thereupon a recess was taken.)

1099 Mr. Williams: I ask these two documents be marked, respectively, Government's Exhibits 482 and 483, for identification.

(Said documents were marked, respectively, Government's Exhibits 482 and 483, for identification.)

Mr. Williams: At this time we would like to offer these two exhibits, Government's Exhibits 482 and 483.

(Said documents, so offered and received in evidence, were marked, respectively, Government's Exhibits 482 and 483.)

Mr. Williams: It is stipulated that Government's Exhibit 482 shows the last date that the cabs whose numbers appear on this exhibit were operated by Yellow, as of January 15, 1946, and that each of those cabs ceased operation because they needed repairs as of the date shown.

Government's Exhibit 483 contains the same data for Checker, and the same stipulation is made with respect to 483.

Mr. Lynton: And it is further agreed between counsel with respect to both those exhibits that

1100 counsel for defendant may on his cross examination of Mr. Bieze adduce testimony showing that war conditions were accountable for the nonreplaceability of parts, and that the government will recall Mr. Sokol so that like testimony on cross examination may be elicited by counsel for defendants with respect to Checker.

Mr. Williams: We will not object to that line of examination by you.

By Mr. Hotchkiss:

Q. Mr. Bieze, I call your attention to the period of time from about June of 1945 to March of 1946; during that period of time did you as an officer of Yellow and Chicago

Yellow keep yourself informed concerning competition in the taxicab business in the city of Chicago? A. Yes.

Q. During that period of time did it come to your attention that a considerable number of unlicensed taxicabs were operating on the streets of Chicago? A. I saw them.

Q. Was it your information that many of those taxicabs were operated by veterans of World War II?

1101 Mr. LYNTON: I object to the form of that question, was it his information that they were operated by veterans?

The COURT: Do you mean because of immateriality?

Mr. LYNTON: I object to it because he is asking whether information came to him that they were operated by veterans. I think the form of the question is bad. The source of the information is not disclosed. Of course, this whole line of testimony I think is immaterial, but I make the specific objections in addition.

The COURT: He may answer if he knows.

By the WITNESS:

A. I wouldn't know.

1102 By Mr. HOTCHKISS:

Q. You would not know? A. No.

Q. But there were unlicensed cabs on the street? A. Yes, sir.

Q. Did the Yellow Cab Company, through yourself or other persons make any attempt to ascertain the approximate number of the unlicensed cabs operating on the streets of Chicago during any of that period from June of 1945 to March of 1946?

Mr. LYNTON: I object to that. I think it is quite immaterial to any possible issue in the case. We are now going into the question of unlicensed cabs.

The COURT: He may answer.

By Mr. HOTCHKISS:

Q. Did you? A. I did not make any check.

Q. I say, did you or any of the officers of Yellow make any such check? A. I did not.

Mr. HOTCHKISS: Will you read the question to the witness?

(Question read.)

1103 By the WITNESS:

A. I would not know whether Mr. Samuels or Mr. Hogan did.

By Mr. HOTCHKISS:

Q. You did not know? A. I did not know.

Q. So that you have no information as to the approximate number of unlicensed cabs operating on the street?

Mr. LYNTON: Now, you are summing up and changing his testimony. I think he has answered the question. I object to the form of the question.

The COURT: Sustained.

Mr. HOTCHKISS: I wish at this time to offer in evidence Government's Exhibit 437, which appears on page 454 of the excerpts.

Mr. LYNTON: Have you finished with this witness? This has nothing to do with him.

Mr. HOTCHKISS: No, it is separate.

Mr. LYNTON: Let us finish with the witness first. Then we will go on with the other documents. I did not understand, has this any relationship to the questions you are going to ask this witness?

1104 Mr. HOTCHKISS: Yes. It is stipulated between counsel that this letter agreement was entered into; is that correct?

Mr. LYNTON: It is stipulated it was signed by the signatories mentioned. Objection is made as to its materiality.

Mr. HOTCHKISS: The letter is dated December 30, 1942, from the New York Central Railroad and Chicago, Rock Island & Pacific Railroad to Mr. Markin.

(Said document, so offered and received in evidence, was marked Government's Exhibit 437.)

Mr. HOTCHKISS: And it reads:

"This letter is for the purpose of confirming our understanding regarding the operation for the time being of Parmelee busses and Yellow and Checker cabs in the so-called 'Taxi Court' at La Salle Street Station, Chicago, for the purpose of handling the increased volume of business. The 'Taxi-Court' is shown crosshatched in yellow upon your plan attached hereto, entitled 'La Salle Street Station, Taxicab Area',

1105 Drawing No. 2.

* * *

"The Parmelee Transportation Company shall furnish an adequate number of busses for the transfer of the passengers of the Railroad Companies from La Salle Street Station to connecting line railroad depots.

"The Yellow Cab Company and the Checker Taxi Company shall jointly furnish an adequate number of

taxicabs to accommodate the business at La Salle Street Station and the operation of the taxis in the 'Taxi-Court' shall be satisfactory to the representatives of the New York Central and Rock Island Companies."

Q. Mr. Bieze, I ask you whether—

Mr. LYNTON: I take it the Court is reserving its ruling with respect to materiality.

The COURT: Yes, the same ruling.

By Mr. HOTCHKISS:

Q. Mr. Bieze, I ask you whether Yellow taxicabs did proceed to the Taxi Court at the La Salle Street Station in Chicago? A. They do.

1106 Q. During the period after 1942? A. They do.

Q. Did Yellow taxis go to the station ramp at that station prior to that date? A. They did.

Q. And they also went to the corresponding facilities of the other railroad stations in Chicago? A. This is correct.

Mr. HOTCHKISS: That is all.

Cross Examination.

By Mr. LYNTON:

Q. Mr. Bieze, you recall that in March, 1947, there was a taxicab strike, is that right? A. March, 1937.

Q. 1937? A. Yes.

Q. That was a strike, was it not, by drivers of taxicabs of the City of Chicago, is that correct? A. Yes, sir.

Q. Were the demands made by the drivers during the course of those strikes addressed to higher wages?

1107 A. Yes, sir.

Q. Was there a settlement of that strike? A. There was.

Q. Now, during the period of the strike, was it not a fact that more cabs were operating than was necessary to meet the public demand? A. That is right.

Q. Was that not the reason why the drivers' compensation at that time was less than the drivers desired?

Mr. HOTCHKISS: I object to that line of questions as calling for conclusions from the witness. Let him state the facts, then the Court draw the conclusions from those facts.

Mr. LYNTON: I think I am asking a direct factual question.

The COURT: No, I think the question is proper. Overruled.

Mr. LYNTON: Read the question, please.
(Question read.)

By the WITNESS:
A. Correct.

By Mr. LYNTON:

Q. During the course of the strike, were there
1108 negotiations with a drivers' union? A. There was.

Q. Did those negotiations continue for some time after the strike? A. They did.

Q. And did not the drivers' union inform the officials of Yellow that in their opinion there were too many cabs operating on the streets of Chicago to meet the public demand? A. Correct.

Q. And did not the union representatives likewise inform the officials of Yellow that that was the reason why the drivers were unable to earn sufficient income? A. That is right.

Q. During the course of those discussions, was the suggestion not also made that the true solution of the problem of the drivers' inability to earn sufficient wages was a reduction in the number of cabs on the streets of Chicago? A. That is correct.

Q. You have testified on direct examination that about
March, 1937, there was licensed to Yellow Cab Com-
1109 pany 2,166 cab licenses. A. Correct.

Q. You have also testified that during that month, and the month thereto, Yellow Cab Company actually placed on the streets of Chicago an average number of cabs less than the number of cabs licensed, is that correct? A. That is right.

Q. Was not the reason for that differential because public demand did not require additional cabs? A. Correct.

Q. Was that not a matter of discussion with the union members? A. Correct.

Q. This matter was presented to the City Council during the year 1937, was it not? A. Correct.

Q. During the year 1937, didn't the City Council pass an ordinance? A. It did.

Q. The precise date was December 22, 1937, was it not? A. Correct.

Q. And you recall that in that ordinance there
1110 was a declaration of legislative finding with respect
to public demand for taxicabs? A. That is right.

1111 Q. Did these problems relating to the number of taxicabs which Yellow placed on the Chicago streets during the year 1937 have anything to do with Checker Cab Manufacturing Corporation? A. No.

Q. Were they purely problems of operation from the standpoint of Yellow? A. Problems of operation of Yellow Cab Company.

Q. Now, I would like to turn to the period after Pearl Harbor. You have testified that during the period after Pearl Harbor there were at times cabs licensed to Yellow which were not placed in operation daily on the streets of Chicago, is that correct? A. Correct.

Q. Did Yellow experience difficulties due to war time restrictions in obtaining replacement parts after Pearl Harbor? A. I did.

Q. And the reason why those cabs were not placed on the streets of Chicago after Pearl Harbor due to those war time restrictions? A. Right.

Q. Did Yellow attempt to get replacement parts
1112 after Pearl Harbor? A. It did.

Q. Was it successful? A. It was not.

Q. Did it obtain parts, some parts from time to time? A. It did from time to time, yes, sir.

Q. And those parts which it did obtain, did it use? A. It did.

Q. And did it also, in order to utilize the maximum number of cabs, take parts from one cab which might not be fully operable, to put into another cab so that there would at least be a maximum amount of cabs operable? A. Correct.

Q. And did Yellow during this time have communications with the Office of Defense Transportation? A. It did.

Q. And did it exert its efforts to obtain replacements? A. It did.

Q. I show you a list, which has been marked as
1113 Government's Exhibit 482, and which purports to represent specified numbers of cabs which were not in operation for a period or periods before January 15, 1946. I ask you whether the cabs which were not in operation as of January 15, 1946 and which are shown in that exhibit were not out of operation because replacement of parts or maintenance was necessary? A. That is correct.

Q. And in connection with that list, were some of the cabs put back into operation immediately after January 15, 1946? A. They were.

Q. And with respect to those cabs which were not restored to operation; was the reason that parts were unobtainable due to war restrictions? A. Correct.

Q. The government asked you some questions with respect to the purchase of cars from manufacturers up to about the early part of 1946 and, as I recall it, you testified that you obtained two or three cars? A. Two.

Q. Two cars, which you actually placed in opera-
1114 tion? A. Right.

Q. Did you during the early part of 1946 communicate with various dealers in the city of Chicago and elsewhere for the purpose of obtaining cars of any type? A. We did.

Q. And did you receive communications from those dealers? A. We did.

Q. I believe you testified on direct examination that most of those dealers stated that they were unable to supply you with cars at that time? A. Correct.

Q. Did you not nevertheless persist in your attempts to obtain cars wherever available? A. We did.

Q. And between that date and the present time, have you succeeded in obtaining cars? A. We have.

Q. How many licenses do you now have? A. 1,595.

Q. And how many cars do you now have? A. About 1,605.

1115 Q. Of those 1,595 are licensed, are they not? A. Correct.

Q. With respect to the licensed cars, what manufacturers produced them? A. We have Fords, Chevrolets, Plymouths, Dodges, one Studebaker, Oldsmobile, Mercuries, Nashes.

Q. And do those represent the result of your exertion to get cars wherever possible? A. It does.

Q. Now, I would like to take you back a few years, Mr. Bieze. A. All right.

Q. During the course of your direct examination you testified that when you received 1,035 model K cabs produced by Checker Cab Manufacturing Corporation during the year 1929 the previous cabs which the Model K's replaced were junked? A. Right.

Q. How long a period of time, speaking approximately, were the junked cars in operation before their junking? A. Three to four years.

Q. You recall, do you not, that in the year 1925 Yellow Cab Manufacturing Company was sold to General Motors Corporation? A. Right.

1116 Q. And Yellow up to 1925 had received a purpose-built cab made by Yellow Cab Manufacturing Company, did it not? A. Correct.

Q. And that company was then an affiliate of Yellow Cab, is that correct? A. Correct.

Q. And the executive direction of the Yellow Cab Manufacturing Company and the Yellow Cab Company was under Mr. John Hertz, was it not? A. Correct.

Q. When General Motors purchased Yellow Cab Manufacturing Company in 1925, did it change the name of that company? A. It changed it to Yellow Truck & Coach Manufacturing Company.

Q. After General Motors purchased Yellow Cab Manufacturing Company, did it remove that company from its plant in Chicago to Pontiac, Michigan? A. It did.

Q. And did General Motors then utilize that plant for the production of trucks and buses? A. As I recall it, yes.

1117 Q. Yellow did obtain some cabs from Yellow Truck & Coach between the period 1925 and 1929, did it not? A. It did.

Q. Was the replacement which Yellow received during those four years commensurate with replacements of cabs by Yellow immediately before 1925? A. Yes.

Q. You also testified that just before 1929 there were some Buicks? A. Correct.

Q. How many? A. Ten.

Q. How did Yellow come to obtain those Buicks? A. For experimental purposes.

Q. And why did Yellow experiment with the Buicks at that time? A. To determine what type of a vehicle was most suitable for the operation of a taxicab in the city of Chicago.

Q. Didn't Yellow at that time also consider that the source of supply from Yellow Truck & Coach Company was no longer certain? A. Correct.

1118 Q. And speaking of the Yellow fleet at large during the period immediately prior to 1929, wasn't that fleet getting rather old? A. It was.

—Q. Do you know Mr. L. A. Kelley? A. I do not.

Q. You testified on direct examination that after the incorporation of Waverly at the end of 1931 Yellow sold to Waverly certain stock owned by Yellow in Chicago Yellow, did you not? A. Right.

Q. Immediately after Yellow sold to Waverly those shares of Chicago Yellow, did Yellow claim a tax loss? A. It did.

Q. With respect to the federal income tax laws? A. It did.

Q. You also testified during direct examination concerning certain proxies which you as secretary of Yellow or Chicago Yellow received. The securities of Chicago Yellow were publicly issued, were they not? A. Right.

Q. And did you file proxy statements with the Securities & Exchange Commission in connection with those
1119 proxies? A. We did.

Q. And were the proxies received by you as secretary received pursuant to the proxy statements filed with the Securities & Exchange Commission? A. Correct.

Mr. Lynton: That is all.

Redirect Examination.

By Mr. Hotchkiss:

Q. Mr. Bieze, are you an economist? A. (No response.)

Q. Are you?

Mr. Lynton: He wants to know if Mr. Bieze is an economist.

Mr. Climenko: I object to that.

Mr. Lynton: Let him ask it.

By the Witness:

A. Yes, I am an economist.

By Mr. Hotchkiss:

Q. What are your qualifications as an economist?

Mr. Lynton: I object to that.

Mr. Climenko: Is he called as an expert?

Mr. Lynton: I object to that.

1120 The Court: In view of his answer, I think he is entitled to follow it up, to find out what he bases that on.

By the Witness:

A. Well, I am not an economist.

By Mr. Hotchkiss:

Q. You are not an economist? A. No.

Q. Thank you.

Mr. Lynton: You meant to indicate by your first answer that you were being sarcastic, did you not?

The Witness: That is right.

Mr. Hotchkiss: We appreciate Mr. Counsel's testimony.

Mr. Lynton: The record does not show the tone.

By Mr. Hotchkiss:

Q. You have testified in connection with your cross examination certain results which would flow from a reduction in the number of cabs—

Mr. LYNTON: I object to that.

By Mr. HOTCHKISS:

Q. —that result being that the drivers would get more income.

Mr. LYNTON: If your Honor please, that is not
1121 the testimony. The questions I think were carefully phrased, and were directly directed to whether discussions were had concerning that.

The COURT: You may answer.

The WITNESS: Would you read the question?

(Last question read by reporter.)

The WITNESS: Correct.

By Mr. HOTCHKISS:

Q. In March of 1937, Government's Exhibit 398(a) shows that the average daily number of Yellow cabs in operation was 1650. In March of 1938 the same exhibit shows 1480 cabs. I call attention now to Government's Exhibit 398(a) which shows that in March of 1937 the average daily commission earned by drivers was $2.42; in March of 1938, one year later, the average commission was $2.78.

Do you now, as an economist, ascribe that increase to the reduction in the number of cabs?

Mr. LYNTON: I object to that question.

The COURT: Sustained.

Mr. LYNTON: Incidentally, you haven't quoted accurately. You have taken two particular months. You have left out one intervening month at least. Would you want
1122 to mention January, 1938, for example?

Mr. HOTCHKISS: I am willing to mention January of each year to show that January of each year appeared to be the high level of daily commissions earned by drivers.

Mr. LYNTON: Let's let the record show then:

January, 1937	$3.41
January, 1938	3.53
January, 1939	3.72
January, 1940	4.38
January, 1941	4.13
January, 1942	4.85
January, 1943	6.95

1123 By Mr. HOTCHKISS:

Q. Mr. Bieze, on what did you base your conclusion that too many cabs in the City of Chicago was responsible for the low wages in 1937?

Mr. LYNTON: If your Honor please, I did not use Mr. Bieze as an expert, and I did not ask him for conclusions.

Mr. Hotchkiss: But he did testify to that as a fact.

Mr. Lynton: I asked him concerning discussions with the union and before the City Council.

The Court: Well, I think counsel for the defendants has stated substantially what he said. I don't know whether it was a fact based on his own information, or whether it is the result of discussion.

I think he ought to be asked the question now as to whether it is his own conclusion that the reduction in the number of cabs resulted in the decreased earnings for drivers or not.

The Witness: That is correct.

The Court: Is that your own opinion or conclusion?

The Witness: Yes, sir.

By Mr. Hotchkiss:

1124 Q. Is it your own personal conclusion that in 1937 there were more than enough cabs on the streets to meet the public demand? A. Correct.

Q. You have testified that during the period after Pearl Harbor you attempted to secure replacements of cabs. A. We did.

Q. Now, during that period up to the early part of 1945, did you attempt to secure replacements on the basis of any except cabs which had been manufactured by the Checker Cab Manufacturing Company?

Mr. Lynton: I don't understand that question, the form.

The Court: It is not clear to me.

By Mr. Hotchkiss:

Q. Had you, during that period of time, attempted to secure any except cabs which had been manufactured by the Checker Cab Manufacturing Company?

Mr. Lynton: Are you referring to replacements or new cabs?

Mr. Hotchkiss: To replacements.

Mr. Lynton: I think we have some confusion. My
1125 questions were directed to the replacement of parts.

Mr. Hotchkiss: It was not clear.

Mr. Lynton: Maybe this will clarify it when I state it was replacement of parts.

Now, I have no objection to your asking on either score, but I would like to have it clear.

By Mr. Hotchkiss:

Q. On replacement of parts during the period up to the early part of 1945. A. We were not eligible for cars. We were a non-essential industry.

Q. You did, however, secure certain titles to cars from New York? A. They were used taxicabs.

Q. They could still be used as replacements, is that right? A. Yes, sir.

Q. Now, during that period of time, after Pearl Harbor, and up to the early part of 1945, did you, in your search for replacement of cars, whether new or used, try to get any cars except those which had been made by Checker
1126 Cab Manufacturing Company? A. We did, and we were told it would be necessary to get a certificate for automobiles. We were not eligible.

Q. At what time were you told? A. The latter part of 1944 and early part of 1945.

Q. Who told you that? A. The Office of Price Administration.

Q. From whom did you try to get cars then? A. We first had to make application for a certificate to the Office of Price Administration. The Office of Price Administration said we were not eligible.

Q. You were not eligible, therefore you could not get any cars? A. That is correct.

Q. That is, new cars? A. Correct.

Q. Therefore, you made no attempt to secure new cars? A. We did attempt, but we could not get the certificate to get the automobiles.

Q. After having been turned down by the Office of
1127 Price Administration? A. Correct.

Q. I refer to Government's Exhibit 482, which bears the notation: "Dates certain cabs of Yellow were last operated prior to January 15, 1946."

I hand you that exhibit and ask you whether any of those cars listed there had not been smashed up or were otherwise in such a condition that they could not be used for taxicab service? A. They could not be used for taxicab service due to lack of parts that we were unable to get.

Mr. LYNTON: May the record show that this last exhibit, 482, was prepared by the Government, Mr. Hotchkiss?

Mr. HOTCHKISS: Yes.

Q. Were any of the cabs on this list wrecked beyond repair?

Mr. LYNTON: He has answered that question already.

Mr. HOTCHKISS: No, on this list represented by Government's Exhibit 482.

Mr. LYNTON: He just answered that question.

1128 Mr. HOTCHKISS: I asked for it, but it has not been answered.

Q. Were they smashed beyond repair?

Mr. LYNTON: Will the reporter read the last question and answer?

(Record read.)

Mr. LYNTON: Now, I object to the present question as being repetitious.

Mr. HOTCHKISS: Now, I asked him if any of these cabs had been smashed beyond repair.

Mr. LYNTON: If your Honor please, I think he has just answered the question.

The COURT: It seems to me that it has been answered.

Mr. HOTCHKISS: He has answered only to the fact they could not get repairs, not as to whether—

The COURT: We will save time by answering it again.

You may answer.

By the WITNESS:

A. These cars were inoperable due to our inability to get parts to make the necessary repairs to put them back on the street.

Mr. HOTCHKISS: That still does not answer the
1129 question I put.

Mr. LYNTON: Will you put another question?

Mr. HOTCHKISS: I ask him the same question.

Mr. LYNTON: I object to it.

Mr. HOTCHKISS: I repeat it.

The COURT: Read the question.

(Question read.)

By the WITNESS:

A. No.

Mr. HOTCHKISS: That is all.

Mr. LYNTON: I have no further questions.

The COURT: You are excused.

(Witness excused.)

MICHAEL M. SOKOL, recalled as a witness on behalf of the Government, having been previously sworn, testified as follows:

Direct Examination.

By Mr. WILLIAMS:

Q. Are you the same Mr. Sokol who testified this morning in this case? A. Yes, sir.

Q. I hand you Government's Exhibit 483, which
1130 purports to be a list of cabs of Checker Taxi Company, which shows the cab number and the date the cab last operated as of January 15, 1946.

Will you tell me whether on January 15, 1946, any of these cabs on that list were smashed beyond repair? A. I do not believe so.

Mr. WILLIAMS: That is all.

Cross Examination.

By Mr. LYNTON:

Q. Mr. Sokol, with respect to each and all the cabs shown on this list, Government's Exhibit 483, isn't it a fact that those cabs ceased operations because of the need for repair and maintenance? A. May I call your attention to the fact that all of these cabs—

Q. Speak up louder. A. —in this list appear to have gone out of the service after the beginning of the war.

Q. That is right. But will you answer the question I asked, please?

Read the question.

(Question read.)

1131 By the WITNESS:

A. That is correct.

By Mr. LYNTON:

Q. Didn't some of these cabs become restored to operation shortly after January 15, 1946? A. Practically all of the cabs on this list were returned to operation almost immediately after that date.

Q. With respect to such of the cabs as were not so restored to operation, was the reason why they were not restored because of the inability of Checker to obtain the necessary parts and maintenance? A. We obtained most of the parts. I believe there were three instances of cars that were destroyed by fire where we could not replace the bodies.

In those three instances, we managed to purchase other cab replacements.

Q. Aside from those three cabs, were they all restored to operation? A. All but those three, possibly four. I do not just recall.

Q. There was some small number although your

1132 recollections may not be exact, is that correct? A. That is correct.

Q. Mr. Bieze, I invite your attention with respect to this list, Government's Exhibit 483, to periods of some time prior to January 15, 1946, during which the listed cabs were not actually in operation; were those lapses of time necessitated by the war time difficulties in obtaining

replacement of parts? A. These lapses occurred as the result of our inability to obtain parts or mechanics in some instances to make certain repairs that might have facilitated repairs to these cabs.

Q. Were those causes, parts replacement and man power problems, the result of war restrictions? A. They were.

Mr. LYNTON: That is all.

Mr. WILLIAMS: No further questions.

The COURT: You are excused.

(Witness excused.)

The COURT: This is just about adjourning time. We will adjourn until ten o'clock tomorrow morning.

(Thereupon an adjournment was taken to 10:00 A. M. of the following day, June 3, 1948.)

1133

No. 46 C 1339

UNITED STATES OF AMERICA, PLAINTIFF,

vs.

YELLOW CAB COMPANY, *et al.*, DEFENDANTS.

Before Judge LaBuy

Thursday, June 3, 1948,
10 o'clock a. m.

Court met pursuant to adjournment.

Present: Mr. Hotchkiss
Mr. Williams
Mr. Lynton
Mr. Ginsberg
Mr. Fuller
Mr. Climenko

The CLERK. The case on trial.

The COURT: Proceed, please.

Mr. HOTCHKISS: Your Honor, at the outset, I wish to withdraw government's offer of what has been marked for identification as Government's Exhibit No. 434, and which has been admitted in evidence subject to the court's standard ruling.

The COURT: A motion to withdraw.

1134 Mr. HOTCHKISS: Yes, your Honor. I wish to withdraw it for the reason that the government, after studying the document, has come to the conclusion that there is serious doubt as to whether it is competent; for that reason, we wish to withdraw it.

The Court: Motion allowed.
Mr. Hotchkiss: Mr. Passolt.

C. L. Passolt, called as a witness on behalf of the government, having been first duly sworn, testified as follows:

Direct Examination.

By Mr Hotchkiss:

Q. Will you state your name for the record, please? A. C. L. Passolt.

The Court: How do you spell that name?

The Witness: P-a-s-s-o-l-t.

By Mr. Hotchkiss:

Q. What is your address, Mr. Passolt? A. 6638 North Campbell, Chicago, Illinois.

Q. By whom are you employed at the present time? A. Parmelee Transportation Company.

Q. What is your position or occupation with that company at the present time? A. Vice president, treasurer and general manager, and a director.

Q. Where are your offices located? A. 300 North Desplaines.

Q. For how long a period of time have you been employed by that company? A. Since June of 1941.

Q. For how long a time have you been an officer of that company? A. Since 1943.

Q. And at that time, what office did you hold? A. Assistant treasurer.

Q. Now, does the Parmelee Transportation Company operate certain motor vehicles within the city of Chicago? A. They do.

Q. Where does it operate those motor vehicles? A. Between railroad stations largely, as far as passenger cars are concerned, but—

Q. What—

Mr. Lynton: Let him finish his answer.

Mr. Hotchkiss: Excuse me.

The Court: Did you complete your answer?

The Witness: They also operate buses between the airport and downtown locations, and trucks—

By Mr. Hotchkiss:

Q. Just a word of explanation, Mr. Passolt. Is there a distinction between the buses and the passenger cars that you refer to? A. Railroad passenger cars is what I was referring to, between railroad stations, and the buses are for airport passengers to and from the airport.

Q. Are there different types of buses you operate for the airport? A. They are.

Q. Describe them. What type of buses do you operate for the airport? A. 23-passenger Flexible bus.

Q. What do you mean by Flexible bus? A. That is the manufacturer's name.

Q. For how long a period of time have you been operating those buses? A. Since August, 1947.

Q. Since August of 1947? A. Yes.

Q. You got them from the—A. From the Flexible Company.

1137 Q. Where is that company? A. Loudenville, Ohio.

Q. Now, as to the buses which you operate, or the motor vehicles which you operate between railroad stations in Chicago, will you describe the type of equipment that you use for transporting passengers? A. They are all seven-passenger—from seven to ten-passenger buses or limousines with as much baggage space as we can get in the vehicle.

Q. Where is the baggage space located? A. In the trunk at the rear of the car.

Q. Now, do you also operate other vehicles for carrying baggage between railroad stations? A. Yes, sir, we operate trucks for carrying baggage between stations, as well as a city delivery service for baggage from and to the railroad stations from city addresses.

Q. Now, how many of those trucks do you operate? A. Fifty-one.

Q. How many of those trucks are operated between railroad stations, doing station business? A. Oh thirty-five to thirty-six.

Q. And the balance of those are used for what

1138 purpose? A. For city delivery purposes.

Q. For city delivery purposes, that is from the station? A. To a city address.

Q. Now, how many motor vehicles do you operate in the inter-station passenger transportation business? A. At the present time, about eighty-five.

Q. Are all of those operated, or substantially all of them, operated each day? A. About 90 per cent are operated each day.

Q. From whom did you purchase those motor vehicles that are used in passenger transportation? A. We pur-

chased them from various dealers, from estates, any place we could get that type of car. They are largely used cars we have at the present time.

Q. Now, prior to say March of 1935, where had you secured these coaches or cars? A. I was not with Parmelee Transportation at that time.

Q. So you don't know? A. No.

Q. All right. Now, Mr. Passolt, I want to direct
1139 your attention now to the question of certain arrangements which the Parmelee Transportation Company may have with the railroad.

Mr. LYNTON: I object to that statement.

Mr. HOTCHKISS: I am simply indicating the general territory I wish to cover. I will now put the direct question.

Q. Mr. Passolt, does the Parmelee Transportation Company have any contractual relations with any railroads which operate into the city of Chicago?

1140 Mr. LYNTON: I object to the question, to the form. It asks for a legal conclusion as to whether they had contractual arrangements.

The COURT: He may answer.

By the WITNESS:

A. We have a written contract with only one railroad.

By Mr. HOTCHKISS:

Q. You have a written contract with one railroad? A. Yes.

Q. And with what railroad do you have that written contract? A. The Nickel Plate.

Q. Do you have any unwritten agreements or contracts with any railroads? A. No.

Q. With none of the railroads into Chicago? A. No.

Q. Now will describe the mechanics under which your busses or your coaches pick up passengers at the railroad stations? A. At the railroad station we will have busses assigned to certain spaces for the five other stations.

1141 Q. For the— A. Five other stations, and our passenger agents collect the Parmelee coupon which is on the railroad ticket for any passengers who are desirous of making an inter-station change, and are going beyond Chicago. We are really a link between the two railroads. And the passengers are then put into the bus which is going to the station which their outgoing train leaves from.

Q. Then that coach, I believe you term it— A. Yes.

Q. —proceeds to the different stations the passenger's coupon or ticket calls for? A. That is right.

Q. Now, does the passenger presenting your bus driver with one of these coupons make any payment to you or to Parmelee?

Mr. Lynton: You mean payment in cash, I presume.

By Mr. Hotchkiss:

Q. Yes, a cash payment. A. He does not, in the first place, present it to the driver. He presents it to the passenger agent, but there is no payment made.

Q. He presents the coupon to the passenger agent,
1142 you say? A. Yes, then he directs the passenger to the location, or to the station to which they are going.

Q. So that your driver does not actually pick up any coupons? A. No.

Q. Now, who employs the passenger agent? A. We do.

Q. He is a Parmelee employee? A. Yes.

Q. Now, what do you then do with those ticket stubs that have been picked up by the passenger agent, who is your employee? A. They are turned in daily to our offices, and we in turn bill the railroads at the end of the month, the outgoing railroads, and present them with the coupon as evidence that we have transported the passenger.

Q. What do you mean when you say you bill the outgoing railroad? What do you mean by that expression? A. The outgoing railroad is the railroad that is leaving
1143 Chicago for a further destination, and the outgoing railroad is the railroad that is leaving Chicago, pays us for the service to their railroad.

Q. Then each outgoing railroad makes payment to you of the passengers who have been delivered to that station? A. Yes, sir.

Q. And on whom you have submitted these stubs, is that correct? A. That is correct.

Q. At the present time, what is the fare that you receive on those stubs? A. One dollar per coupon.

Q. That is the same for adults as for children? A. There are half fares, fifty cents.

Q. Now, does that fare cover the passenger's baggage as well as the individual? A. It carries his hand baggage and his checked baggage, which is delivered by truck.

Q. Now, if the passenger does not travel in your coach, but let us assume he walks from one station to another, and his baggage is carried on the Parmelee truck, do you collect a dollar on that? A. Yes.

1144 Q. It is the same price whether you carry the passenger alone, the passenger and his baggage or the baggage alone, is that correct? A. That is correct.

Q. Mr. Passolt, are there normally any seasonal variations in this inter-station business? A. Normally, yes.

Q. What is your peak season? A. The four summer months and the Christmas holidays.

Q. The four summer months and the Christmas holidays? A. Christmas and New Year's holidays, from the middle of December to the middle of January.

Q. What is your slack season? A. From the middle of January to May, and October to the middle of December.

Q. Mr. Passolt, does the Yellow Cab Company maintain any starters at any of the railroad stations that your coaches operate from? A. Not at our loading platform.

The Court: Keep your voice up.

Mr. Lynton: I cannot hear you.

The Witness: Not at our loading platform.

1145 By Mr. Hotchkiss:

Q. They do maintain starters at the loading platforms for their cabs, do they? A. Very possibly.

Q. Do you know? A. I don't know whether they do at all stations or not. I know they do at some.

Q. Do you know at what stations they do maintain starters for their cabs at their loading platforms? A. I would not know. I have seen them at different stations at different times. I don't know what hours they are there or whether they are there at all times. I have seen them at the Union; I have seen them at the La Salle Street Station, and I have seen them at the I. C.

Q. Have you seen them at the North Western? A. I believe I have.

Q. Have you seen them at the Erie? A. I don't recall.

Q. Now, Mr. Passolt are you in the course of your official duties with the Parmelee Transportation Company, acquainted with the purchase by Parmelee subsidiaries of taxicabs?

Mr. Lynton: I did not hear that question.

1146 Mr. Hotchkiss: Will you read it?

(Question read.)

Mr. Lynton: I object to that on a number of grounds. First, I object to the characterization, "Parmelee subsidiaries". I don't know which companies you mean when you so describe them.

1147 The Court: I sustain the objection. Specify it in more detail.

By Mr. Hotchkiss:

Q. Does the Parmelee Transportation Company have certain subsidiaries which operate taxicabs?

Mr. Lynton: I object to that on the same ground as before. What do you mean by subsidiaries?

The Court: He may answer that.

The Witness: Will you read the question?

(Last question read by reporter.)

The Witness: Yes.

By Mr. Hotchkiss:

Q. Is the Yellow Taxi Company of Minneapolis such a subsidiary?

Mr. Lynton: If your Honor please, I object to that. We have on the record the exact number of shares that are held by Parmelee and Checker and Yellow. I do not think we need indulge in any characterization, whether it is a subsidiary or not. The fact is the stock ownership is 29.5 per cent.

Mr. Hotchkiss: Of Minneapolis?

Mr. Lynton: I am sorry. Competition with street cars makes it difficult to understand.

1148 Mr. Hotchkiss: Of Minneapolis?

The Witness: What was that question, again?

(Last question read by reporter.)

By the Witness:

A. Yes.

By Mr. Hotchkiss:

Q. During the course of your official business with the Parmelee Transportation Company, do you have occasion to review or pass on or be informed concerning the purchase by your company of taxicabs? A. I am informed, yes, through financial statements that come to me monthly.

Q. I hand you Government's Exhibit No. 459, which is Parmelee's answer to plaintiff's interrogatory asking for the number of cabs purchased by various subsidiaries of Parmelee, and as to whether certain of them were purchased from Checker Cab Manufacturing Company, and as to whether any of them were purchased by companies other than Checker Cab Manufacturing Company, and I ask you whether you had anything to do with preparing this Parmelee answer, which is that exhibit.

Mr. Lynton: May I see that before he sees it? Where is the original interrogatory? May I have a

1149 copy of our answer to the interrogatory directed to Parmelee?

Now, inasmuch as you have referred to the answers of Parmelee to Interrogatory No. 30,—is it?

Mr. Hotchkiss: Plaintiff's Interrogatory No. 6.

Mr. Lynton: Interrogatory No. 6. I should also like to have the witness' attention called to the answer to Interrogatory No. 30, which is part of the answer of Parmelee to Government's Interrogatory, and I will read it.

Mr. Hotchkiss: Is this for the purpose of aiding the witness in his testimony?

Mr. Lynton: This is for the purpose of completing something which you have left incomplete.

Mr. Hotchkiss: Proceed.

Mr. Lynton: (Reading):

"The answers to the foregoing interrogatories directed to Parmelee Transportation Company were prepared by or under the supervision of C. L. Passoli, Vice President and Treasurer, Parmelee Transportation Company, 300 North Desplaines Street, Chica-
1150 go 6, Illinois, insofar as the interrogatories relate to Parmelee Transportation Company; N. E. Stowe, Secretary and Treasurer, Yellow Taxi Company of Minneapolis, 127 First Avenue, N. E., Minneapolis, Minnesota, insofar as the interrogatories relate to Yellow Taxi Company of Minneapolis; Edw. F. Kram, Treasurer of Yellow Cab Company of Pittsburgh, of Pittsburgh Transportation Company and of Parmelee Motor Fuel Company, Two Ross Street, Pittsburgh, Pennsylvania, insofar as the interrogatories relate to the Yellow Cab Company of Pittsburgh, Pittsburgh Transportation Company and Parmelee Motor Fuel Company; and Aaron Gottlieb, Treasurer, National Transportation Co., Inc., 1790 Broadway, New York 19, New York, insofar as the interrogatories relate to National Transportation Co., Inc."

1151 Mr. Hotchkiss: Now, I ask the reporter to read the question which was put.

(Last question read by reporter.)

By Mr. Hotchkiss:

Q. Did you have anything to do with preparing that exhibit? A. Not that—

Mr. Lynton: Now, wait a minute. Prepared what, Mr. Hotchkiss, the part relating to Minneapolis?

Mr. Hotchkiss: I refer particularly to the part—to this 459, and I ask whether you had—

Mr. Lynton: Show it to him now.

The Court: Has he seen 459?
The Witness: No.
The Court: You had better show it to him.
The Witness: Yellow Taxi of Minneapolis, no.

By Mr. Hotchkiss:

Q. You had no part in that? A. No. Yellow Cab of Pittsburgh, no. Pittsburgh Transportation Company, no. National Transportation Company, no.

Q. Mr. Passolt, did the Parmelee coaches have access to the railroad station property in picking up passen-
1152 gers from railroads? A. Yes, we have offices in all of the railroad stations.

Q. You have offices in all of the railroad stations? A. Yes.

Q. Do you pay any rent for those offices?

Mr. Lynton: I object. There is no problem in the case concerning that. The Supreme Court, as a matter of fact, in this case and in the Donovan case, has sustained—

The Court: He may answer.

By Mr. Hotchkiss:

Q. Do you pay rent for those offices? A. We do not.

Q. Do the railroads make those offices available to you? A. At times we pay for the necessary revision, that is necessary in the depot, to make improvements to our offices.

Q. Now, do you have any agreements with the railroads with respect to your occupancy of this space?

Mr. Lynton: You mean written agreements?

Mr. Hotchkiss: Any form of agreement.

Mr. Lynton: Then I object to it. It calls for a
1153 conclusion.

Mr. Hotchkiss: Written agreements, then.

Q. Do you have any written agreements? A. Only one that I recall.

Q. With what company do you have a written agreement with respect to the occupancy of space in the railroad station? A. That is the Rock Island and the New York Central, in so far as the carriage court is concerned.

Q. I hand you Government's Exhibit No. 437 and ask you if that is the agreement which you referred to? A. Yes, it is.

Q. I hand you Government's Exhibit 438, and ask you if that is the agreement with the New York, Chicago & St. Louis Railroad which you previously referred to in your testimony? A. Yes.

Q. Now, at all of the stations, do you have this office space which is provided by the railroads? A. At all stations, at all railroad stations.

Q. At all railroad stations in Chicago? A. Yes.

Q. Now, I wish to call your attention to the stub
1154 which is picked up by the passenger agent employed by Parmelee. What wording appears on that stub? A. Usually something to the effect that this authorizes either blank of Parmelee Transportation Company to transfer the passenger and his baggage from this particular station to the other station.

Q. Does the words "Parmelee Transportation Company" appear on all of those tickets or all of those stubs? A. Not all of them; most of them. Others leave it in blank and it is written in.

1155 Q. Where did the coaches of Parmelee pick up the railroad passengers? Is it on the street or is it inside the railroad station? A. Inside the railroad station at the Union Station, at the North Western Station, at the La Salle Street Station. At the I. C. Station it is on the street next to an island provided by the railroad for Parmelee passengers. At the Dearborn it is on a street or alley.

Q. Are there any inside coach or taxicab facilities at Dearborn? A. No.

Q. Is that true of Illinois Central also? A. There are no inside—

Q. No inside? A. And let's see what other station. The B. & O., or Grand Central, it is inside the railroad station.

Q. North Western? A. Inside the railroad station.

Q. When you refer to the inside of the railroad station, is that so far as you know the property of the railroad station as distinguished from a public highway? A. I presume it is.

1156 Q. So far as you know? A. Yes.

Q. Do agents of the Parmelee Company or their representatives board incoming trains? A. No. Not at the present time.

Q. Not at the present time. Have they in the past? A. Yes, but not for—I believe that was discontinued in May, 1942.

Q. In May, 1942. Prior to that time they had made that practice of riding coaches? A. Yes, of some of the trains.

Q. When you say some of the trains, are you referring now to Pullman trains or— A. No, just some of the trains. That is the train that there was quite a bit of transfer business from, and where it was possible for the men to do something between Englewood Station, for instance, and the downtown station.

Q. For what purpose would they ride the trains? A. To make arrangements for baggage or transfer between stations.

Q. Would those agents have to pay any fare in
1157 riding the trains? A. I do not believe so.

Q. On what roads was that practice of having the agents board certain of the trains followed? A. On most railroads.

Q. On most of them? A. Yes.

Q. Entering Chicago stations? A. On most of them that had stops close to the City of Chicago or close to the downtown area, downtown station.

Q. Do the Parmelee coaches at all times meet the incoming trains promptly or are there sometimes delays in meeting the trains? A. We try to meet them all promptly.

Q. Occasionally there may be delays? A. Very rarely at this time.

Q. Do the railroads protest to Parmelee when those delays occur?

Mr. Lynton: I object to that. I think that is utterly immaterial.

The Court: He may answer.

By the Witness:

A. Yes.

By Mr. Hotchkiss:

1158 Q. They do. And what is the form of that protest, is it oral or written? A. It could be oral, it could be written.

Q. And from who does the protest normally come?

Mr. Lynton: Do you mean which individual in the railroad company?

Mr. Hotchkiss: Yes.

Q. Let's take the La Salle Street Station. From whom would such a protest come there?

Mr. Lynton: I object to this question, being utterly immaterial. He has got the facts.

Mr. Hotchkiss: We are attempting to ascertain the understandings and agreements which exist between Parmelee and the railroads.

The Court: You may answer.

By the Witness:

It might come from the depot passenger agent, or it might come from general passenger agent for a specific railway, or it might come from his assistant passenger agent or anybody in the passenger department.

By Mr. HOTCHKISS:

Q. Have you had occasion, Mr. Passolt, to discuss with representatives of any railroads entering Chicago
1159 any questions relating to the Parmelee passenger transportation service?

Mr. LYNTON: I object to the form of the question. I think you want to ask whether he ever did have discussions and, if so, let's get the type of discussion and not whether he ever had occasion.

By Mr. HOTCHKISS:

Q. Have you had occasion—

Mr. LYNTON: I object to the form of the question.

The COURT: Sustained.

By Mr. HOTCHKISS:

Q. Have you had any discussions with the representatives of any of the railroads entering Chicago with respect to the Parmelee inter-station transportation and baggage service since you have been with the company? A. Yes.

Q. Let's take the La Salle Street Station, the railroads entering that station. Do you recall the first occasion you had to discuss this service with representatives of the railroads, if you had any such discussion with them?

Mr. LYNTON: He has testified he has had discussion.
1160 I object to that. It seems to me it is an utterly ridiculous question, utterly immaterial, did he ever have any discussion. When was the first discussion he ever had—

The COURT: About the service Parmelee rendered to the railroads entering La Salle Street Station?

Mr. HOTCHKISS: Yes.

The COURT: He may answer.

By the WITNESS:

A. I don't recall any particular discussion with the La Salle Street Station railway.

By Mr. HOTCHKISS:

Q. How often since you became an officer of Parmelee have you had occasion to discuss your inter-station passenger service with representatives of railroads entering the La Salle Street Station? A. It is possible—

Q. How often, approximately? A. I don't recall any particular occasion, but it is possible there might have been a telephone conversation to the effect that on such and such a day, why, we missed one train, or we didn't have enough coaches for the passengers, but I don't recall any general discussion with the La Salle Street Station People.

1161 Q. If, for example, one of the railroads coming into the La Salle Station puts on a special train, would you be notified as to that? A. Yes, our traffic department would be, yes.

Q. Your traffic department? A. Yes.

Q. As a matter of routine, would they be so notified? A. Usually. Special trains or special movements of military personnel, we were usually advised of.

Q. And the same with the other stations? A. That is true.

Q. And that would be a matter of routine also? A. That is right.

Q. Are there any railroad terminal associations? A. Yes.

Q. What ones? A. Western Passenger Association and Central Trunk Line Passenger Association.

Q. Have you had any occasion to discuss the Parmelee inter-station service with representatives of either of those Associations? A. Usually a joint meeting of both of the Associations.

Q. A joint meeting of both of the Associations?

1162 A. Yes, sir.

Q. With yourself? A. And other representatives of Parmelee.

Q. When was the last occasion on which you had such a meeting, if you remember? A. Sometime in January of this year.

Q. What was discussed at that meeting?

Mr. LYNTON: Do you have something in mind or are you just asking general questions on that? If it is just a general question, I object to it.

Mr. HOTCHKISS: We are still trying to find out what are the basic relationships and understandings.

Mr. LYNTON: I object.

The COURT: Overruled. It is proper as a preliminary question.

The WITNESS: Will you read the question, please?

(Question read.)

By the WITNESS:

A. That was a discussion in relation to our request for an increase in rates as the result of increased costs.

By Mr. HOTCHKISS:

Q. Your discussions along that line, are they nor-

1163 mally made with the Association? A. That is correct.

Q. And I think you have testified that at the present time Parmelee is paid one dollar per passenger? A. That is right.

Q. Is that payment made to you on the basis of certain understandings that had previously been reached with the representatives of the Associations?

Mr. LYNTON: I object to the form of the question. It asks for several conclusions.

The Court: Sustained.

Mr. HOTCHKISS: That is all. Your witness.

1164 Cross Examination.

By Mr. LYNTON:

Q. Mr. Passolt, you have testified on direct examination that Parmelee operates with respect to the transfer of passengers between railroad stations in Chicago, limousines? A. Yes.

Q. Whose capacity is 7 to 10 passengers, is that not correct? A. That is correct.

Q. Does Parmelee operate any taxicabs under the ordinances of the city of Chicago? A. They do not.

Q. Has Parmelee ever operated any taxicabs under the ordinances of the City of Chicago? A. I don't think they ever have. Not to my knowledge, and I know quite a ways back.

Q. You testified on direct examination that you are presently general manager, vice president, treasurer and a director of Parmelee, is that not correct? A. That is correct.

Q. And in your several such capacities, have you examined the records of Parmelee going back quite a time before you actually became employed by that

1165 company? A. Yes.

Q. And in the course of that examination have you ever discovered an instance where Parmelee operated taxicabs under the ordinances of the City of Chicago? A. I have not.

Q. I show you a photostat of the statement entitled: "Parmelee Transportation Company, analysis of automotive equipment purchased, 1929 to date." Did you prepare that statement? A. Yes.

Q. Is that a correct statement? A. Yes.

Mr. LYNTON: I offer it into evidence.

The COURT: I think your offer is premature. This is still the government's side of the case.

Mr. LYNTON: It may be, your Honor, but it bears on the topics covered in the direct examination. It covers the type of vehicle—

The Court: My ruling is not as to its admissibility, but it is out of order when offered at this time while the government has not rested.

Mr. Lynton: If your Honor please, the government has inquired into the type of motor vehicles
1166 operated and has asked in effect the manufacturers, and this list shows the manufacturers of the vehicles presently used by Parmelee as well as all the vehicles—

The Court: It has been identified by him, and the time to offer it is later on, when you present your defense.

If the government does not object, it will be received. It is just out of order at this time. It is premature.

Mr. Hotchkiss: The government has no objection to it, your Honor.

Mr. Lynton: All right.

The Court: If you both join in it, I don't want to be obstinate about it. I will receive it, although it is not correct procedure.

Mr. Lynton: If your Honor would prefer, I will cover the aspects which are directly related to the government's direct examination by oral questions instead of the document. I thought this was a more convenient way.

The Court: It is all right. As long as it is agreeable to both sides, it will be received.

1167 (Said document, so offered and received in evidence, was marked Defendants' Exhibit 1.)

Mr. Lynton: I shall read the contents of that exhibit, if the Court please.

"The year 1931: 25 pieces, Checker limousines, 7 passenger."

No purchases until 1936.

"1936, 25 pieces, Checker limousines, 7 passenger.

"1937, 43" and again 1, making a total of 44, Checker limousines, of which 43 are 7 passenger and 1 is a 10-passenger.

"1938, 1 piece, Checker limousine, 10 passenger.

"1939, 15 pieces, Checker limousines, 10 passenger.

"1939, 26 pieces, General Motors Corporation, 1½ ton trucks.

"1940, 2 pieces, Cadillac limousines, 10 passenger.

"1941, 25 pieces, General Motors Corporation, 1½ ton trucks.

1168 "1941, 2 pieces, Cadillac limousines, 7 passenger.

"1943, 8 pieces, Cadillac limousines, 10 passenger.

"1945, 1 piece, Cadillac limousine, 10 passenger.

"1945, 5 pieces, Cadillac limousines, 7 passenger.
"1945, 1 piece, Lincoln limousine, 7 passenger.
"1946, 28 pieces, Cadillac limousines, 7 passenger.
"1946, 2 pieces, Buicks, Buick limousines, 7 passengers.
"1946, 2 pieces, Chrysler limousines, 7 passengers.
"1946, 1 piece, Packard limousine, 10 passenger.
"1946, 6 pieces, Packard limousines, 7 passenger.
"1947, 11 pieces, Packard limousines, 7 passenger."

By Mr. LYNTON:

Q. You testified on direct examination, did you not, Mr. Passolt, that the present number of limousines used by Parmelee is about 85? A. Correct.

1169

Q. Of those 85, how many are Cadillacs? A. I would have to refer to this. 36, I believe.

Q. How many are Packards? A. Eighteen.

Q. How many are Chryslers? A. Two.

Q. How many are Buicks? A. Two.

Q. Are you using the Lincoln limousine also? A. Yes.

Q. And are you actually using any Checker limousines? A. A few.

Q. About how many? A. Around 15.

Q. And that constitutes the present automotive equipment which Parmelee now utilizes in its transfer of passengers between Chicago railroad stations, is that no correct? A. That is correct.

Q. How many trucks did you testify Parmelee was not using in the transfer of baggage? A. Fifty-one.

1170

Q. Of those 51 trucks, how many are General Motors Corporation trucks? A. All of them.

Q. Has that been the case since the respective purchases in 1939 and 1941, 26 and 25 General Motors Corporation trucks? A. That is correct.

Q. You referred on direct examination to the Nickel Plate written contract, did you not? A. Yes.

Q. And I believe you testified that that was the only written contract which Parmelee now has with any railroad? A. Yes.

Q. Do you know on how many days notice that contract is terminable? A. It is short notice. I don't recall whether it is 30 days or 60 days.

Q. I invite your attention to Paragraph Eighth of Government's Exhibit 438. Does that refresh your recollection as to the number of days on which that contract is terminable? A. Yes. Sixty days.

1171 Q. Have you any written arrangements with either of the two railroad associations which you have mentioned on your direct examination? A. Any written—

Q. Any written contracts similar to the Nickel Plate? A. No.

Q. Under any written document whatever that has come to your attention, are the railroad associations required to give any period of notice in order to terminate the arrangements between those associations and Parmelee? A. No.

Q. So far as has come to your attention, those arrangements are terminable at will, are they not? A. That is right.

Q. You have testified that Parmelee does not operate taxicabs under the ordinances of the City of Chicago, have you not? A. That is right.

Q. Does Parmelee ever hire any taxicabs operated by any other taxicab company—by any taxicab company—I withdraw the word "other,"—

Mr. Hotchkiss: I object, your Honor. It is
1172 clearly improper, as going beyond the scope of the direct examination.

Mr. Lynton: I refer to Government's Exhibit 425.

The Court: He may answer.

Mr. Lynton: I will rephrase the question.

Q. Does Parmelee hire any taxicabs operated by a company in the City of Chicago which does operate taxicabs under the licenses of the City of Chicago? A. Occasionally.

Q. From what company? A. Yellow Cab.

Q. And for what occasions? A. On short notice when—on short connections when some people get off the train at the Englewood or 63d Street station and are making another 63d Street station going out, why if they get off and there we have a man at the Englewood Station and he will hire a taxi for the person and we will receive the coupon.

Q. And why does Parmelee do that at the Englewood Station? A. It doesn't pay to have a car out there to meet the trains because it doesn't happen often
1173 enough.

Q. Who pays the taxicab fare as registered on the meter of Yellow? A. Parmelee.

Q. And Parmelee collects its usual coupon rate in normal course, is that not correct? A. That is correct.

Q. Isn't that the only occasion on which Parmelee hires any taxicabs which are licensed under the ordinances of the City of Chicago? A. That is correct.

Q. And with that exception can you state that Parmelee never uses any taxicabs licensed under the ordinances of the City of Chicago? A. That is correct.

1174 Mr. Hotchkiss: Your Honor, I regret having to raise this point again, but I feel that this line of questioning is beyond, outside the scope of direct examination which the Government made. Counsel for defendants has referred to this—Government's Exhibit 425, which was introduced in evidence. No reference whatsoever was made to Government's Exhibit 425 in connection with the Government's examination of this witness. Neither were any questions put to this witness with respect to the situation referred to in Government's Exhibit 425.

For that reason I respectfully move that the questions and answers be stricken, as what has been raised might properly be a part of the defendant's case, but it seems to me has no place here.

The Court: Overruled.

By Mr. Lynton:

Q. Mr. Passolt, how many railroads are there in the Western Passenger Association? A. Probably about fifteen.

Q. And how many within the Central Passenger
1175 Association? A. About the same number. I am not giving you accurate figures. That is approximate.

Q. That is your best estimate? A. Yes.

Q. Mr. Passolt, does Parmelee ever hire any of its limousines for use other than with respect to the transfer of passengers who have come from or are going to railroads? A. No.

Q. Do you understand the question? A. Does it hire it for any other purposes, no.

Q. Does Parmelee use its limousines to pick up any members of the public on Chicago streets and transfer them to destinations of the choice of those members of the public? A. No.

Q. Has it ever? A. No.

Q. Has any one person as a matter of course of business of Parmelee the right to use a limousine going from one railroad station to another all by himself, thereby excluding other passengers? A. No.

1176 Q. Do Parmelee Limousines run in general along fixed routes? A. Yes.

Q. Parmelee trucks carry the checked luggage of railroad passengers between Chicago railroad stations, do they not? A. That is right.

Q. Who makes the arrangements for the transfer of that checked baggage from one railroad station to another? A. Our baggage agent.

Q. Does the passenger, railroad passenger? A. No.

Q. Mr. Passolt, have you ever suggested to any officer of Yellow that Yellow should not attempt to enter the kind of business in which Parmelee is engaged? A. No.

Q. Have you ever made any such suggestion to any officer of Checker— A. No.

Q. —with respect to that company? A. No.

Q. Has any officer of either of those companies
1177 ever made a suggestion to you that those companies or either of them would refrain from entering into the type of business in which Parmelee is engaged? A. No.

Q. Has that topic ever been mentioned to your knowledge at any time? A. No, it has not.

Q. You have mentioned in my examination of you that in your capacities you have investigated the records of Parmelee for many years prior to the actual date of your commencement of employment by that company? A. Yes.

Q. In the course of that investigation, did you ascertain when the predecessor of Parmelee was first formed? A. Yes.

Q. What was that year? A. 1853.

Q. Is the exact date May 9, 1853? A. I believe so.

Q. And has the service performed by Parmelee to the railroads or the railroad associations in Chicago
1178 been continuous since May 9, 1853? A. Yes.

Q. Over the course of this nearly a century has Parmelee employed a trained staff of personnel so far as your records show? A. Yes, they have.

Q. And within the actual period of your employment by Parmelee has Parmelee employed a trained staff of personnel? A. Yes, they have.

Q. Are there special problems touching accounting within the Parmelee business? A. Yes, in so far as the coupons are concerned.

Q. And has Parmelee in that connection utilized a trained personnel for the purpose of performing those accounting functions? A. Yes, they have.

Q. Have the drivers who drive the Parmelee Limousines and trucks been employed by Parmelee over a long period of time? A. Yes, they have. Most of our employees have been there from ten to twenty years.

Q. And have they obtained during the course of that employment a certain seasoning of experience? A. There

1179 was always a group that have had considerable experience in our organization.

Q. Breaking the functions of Parmelee into some arbitrary classifications, does the trained personnel concerning which you have testified apply to the accounting function? A. Yes, it does.

Q. And to the actual driving function? A. Yes.

Q. And to the actual checking of luggage function? A. Baggage agents.

Q. And to the travel, to the extent that that is done on railroads by agents of Parmelee, is that also a part of the seasoned personnel? A. Yes, passenger agents.

Q. And over this long period of time has Parmelee established certain relationships with the railroads? A. Yes, it has.

Mr. Lynton: No further questions.

The Court: Any redirect?

1180 Redirect Examination.

By Mr. Hotchkiss:

Q. Mr. Passolt, I believe you testified in substance that you have made an examination of the records of Parmelee and had been unable to find any indication in those records that Parmelee had operated taxicabs under license in the City of Chicago? A. That is right.

Q. Do you recall during your search of those records seeing any records relating to Parmelee operation of the DeLuxe Motor Company through a wholly owned subsidiary of Parmelee?

Mr. Lynton: I object to that.

By Mr. Hotchkiss:

Q. Did you?

Mr. Lynton: The form of the question I think is very bad because Mr. Hotchkiss is referring to an ownership by General Transportation Company of stock of DeLuxe at a particular time, and that has no relationship to the type of business of Parmelee, which is confined to the transfer between railroad stations of passengers.

The Court: He may answer.

1181 By the Witness:

A. I saw references to it, that we owned the stock, it as a wholly owned subsidiary, General Transportation.

By Mr. Hotchkiss:

Q. Mr. Passolt, does the Parmelee Transportation Company engage in business other than this business of trans-

porting passengers and baggage between stations in Chicago? A. Its business—that is its primary business. It owns some subsidiaries.

Q. It owns some subsidiaries? A. That is right.

Q. Does it engage in any other business operations besides owning certain subsidiaries? What are those subsidiaries, by the way? A. National Transportation Co., Inc.

Q. And what business is that subsidiary engaged in? A. Taxicab.

Q. All right. Proceed. A. Yellow Cab Company of Pittsburgh.

Q. And what business is that engaged in? A. Taxicab.

1182 Q. Very well. Proceed. A. Parmelee Motor Fuel.

Q. Yes, and what business is it engaged in? A. Sale of gas and oil.

Q. Proceed. A. Yellow Taxi Company of Minneapolis.

Q. And what business is it engaged in? A. Taxicab.

Q. Very well. Proceed. A. I think that is all of the active subsidiaries.

Q. Does it own stock in any operating companies, taxicab operating companies? A. Yes.

Q. What company? A. Yellow Cab Company of Chicago.

Q. Do you know how much stock is owned? A. Yes.

Q. How much is it? A. 75,930 shares.

Q. Does Parmelee engage in any other business besides operating, owning these subsidiaries, and owning this stock in Yellow?

Mr. Lynton: I object to the form of the question. I don't think the witness has testified to that.

1183 What the witness has said is that Parmelee is primarily engaged in the business of transferring passengers and baggage between railroad stations, and that it owned stock in certain subsidiaries, and that it owns certain shares of stock in Chicago Yellow. He did not say they were engaged in the operations of those subsidiaries.

The Court: The last question is directed to the question of whether or not Parmelee is engaged in any other business. That is proper.

Mr. Lynton: I had no objection to that, but it was coupled with an observation as to the other. Within those limits I have no objection to the question.

The Witness: No. That's the answer.

By Mr. HOTCHKISS:

Q. Does the Parmelee Transportation Company operate as the management adviser under any management contracts with any companies? A. Yes.

Q. With what companies? A. Yellow Cab Company of Chicago.

1184 Q. Any other companies? A. And with some of the subsidiaries. With Yellow Taxi of Minneapolis.

Q. Yes? A. And Yellow Cab Company of Pittsburgh.

Q. Mr. Passolt, the government made no objection to the desire of defense counsel to introduce at this time a certain document entitled, "Analysis of automotive equipment purchased," from 1929 to date, this document being headed, "Parmelee Transportation Company," and Counsel read from that document.

I ask you whether, if you know whether the Checker Cab Manufacturing Company manufactured any of these multiple passenger limousines following 1939? A. No.

Q. They did not? A. No.

Q. Mr. Passolt, I read to you from Government's Exhibit 441, which is a letter from C. P. Fuller of the firm of Chadbourne, Hunt, Jaeckel & Brown, New York, to Mr. Rank, dated February 3, 1939. I read starting with

1185 the second paragraph of that letter:

"You will recall that one of the reasons we made application without prejudice to our right to claim exemption from the provisions of the Act was to give us some semblance of a franchise to handle the baggage transfer business with the railroads in Chicago, thereby precluding competition in that field. I do not know whether it is your opinion that every effort should be made to make that part of Parmelee's operations come within the purview of the Act in order to preclude competition from arising in that particular sphere. Of course, no competition has arisen in the last ten years, and possibilities of competition might be considered by the board of directors to be remote."

That letter was written February 3, 1939, and it states that no competition has arisen in the last ten years.

Has any competition with your interstate business arisen since February 3, 1939?

Mr. LYNTON: I object to the form of the question. I also move to strike out the entire reading because

1186 it refers to a period of time when this witness was not connected with Parmelee.

The COURT: He may answer.

By the WITNESS:
A. Not that I know of.

By Mr. HOTCHKISS:
Q. Mr. Passolt, I hand you Government's Exhibit 425 consisting of a letter from Levin Rank, President of Parmelee Transportation Company, to Mr. Bieze, Treasurer of Yellow Cab Company, reading:

"On those occasions when Parmelee uses taxicabs for the transportation of its transfer passengers it should be billed at the meter rate for such services. It seems there has been some slight misunderstanding about this in your office, and I will thank you to issue the necessary instructions promptly on your return."

Did you ever see that letter prior to this time? A. I don't think I have. I don't believe I have seen it before.

1187 Q. You don't believe you have? A. That is right.

Q. You are not aware or you have no knowledge concerning the situation to which it refers as of that date?

Mr. LYNTON: I object to that. I object to the form of the question. It is argumentative, among other things.

Mr. HOTCHKISS: No, I am asking—

The COURT: If he has any independent knowledge without referring to this letter, of the subject matter?

Mr. HOTCHKISS: Yes, as of the date of the letter.

The WITNESS: I know nothing as of the date of the letter. I know now we get paid on meter rates from the Yellow Cab. That is all I know.

By Mr. HOTCHKISS:
Q. You do now? A. We do now, and it doesn't amount to over two or three dollars a month.

Q. And if the Yellow Cabs were not used, would it be necessary for you to maintain one of your coaches at the Englewood Station? A. I don't believe so, because

1188 it is so rare. I don't believe that it amounts to two dollars a month total. It hasn't averaged that over a period of time. It is something that happens very rarely, a very minor portion of our business.

Q. Mr. Passolt, I ask you whether it ever occurs that when Parmelee does not have a coach present to meet a train or has insufficient coaches, Parmelee station agent will call in a Yellow cab to pick up the passengers?

Mr. LYNTON: I object to the form of the question.

By Mr. HOTCHKISS:

Q. —and transfer them to the station of their destination?

Mr. LYNTON: I object to the form of the question. It is hypothetical.

The COURT: Read the question.

(Last question read by reporter.)

The COURT: You may answer.

By the WITNESS:

A. I don't believe it has happened once in the last five years, more than once in the last five years.

By Mr. HOTCHKISS:

Q. Do you know of any occasion where it hap-
1189 pened? A. I know it has happened on a rare occasion. I have heard of it probably four or five years ago.

Q. It has happened, though? A. Once.

Mr. HOTCHKISS: That is all, your Honor.

Recross Examination.

By Mr. LYNTON:

Q. Mr. Passolt, on your redirect, the question was asked whether there has been any competition with Parmelee for the business of transferring passengers and baggage between Chicago railroad stations during the period of the last ten years, and you answers, "No." A. Not that I know of.

1190 Q. Did you mean to convey by your answer that you knew and know of no competition from any person, firm or corporation whatever during that period? A. I don't know of any particular firm or corporation that has been doing any of the type of business that we are doing.

Q. Now, going back even beyond ten years, and having recourse to your information gained from the records, do you personally know of any competition that has arisen with respect to Parmelee transfer business?

Mr. HOTCHKISS: I object to that.

By the WITNESS:

A. I know of none of any kind.

Mr. HOTCHKISS: I object, your Honor, to the "personally". Counsel has asked for the witness' information based on a review of the records.

Mr. LYNTON: You object to the word "personally"?

Mr. Hotchkiss: I am objecting to that, and we are objecting—

Mr. Lynton: I withdraw the word "personally".

Will you read the witness' answer?

(Answer read.)

1191 By Mr. Lynton:

Q. Is your answer still the same with the withdrawal of the word "personally"? A. Yes.

Mr. Lynton: I have no further questions.

The Court: Any other questions?

Mr. Hotchkiss: That is all.

The Court: You are excused.

(Witness excused.)

Mr. Williams: At this time I would like to ask counsel whether they will stipulate that they will not contend that the word "contract", as used in the amended complaint in the phrase, "pursuant to contract with railroads and railroad terminal associations", which appears particularly in paragraph 18, and also in others, does not include understandings and agreements.

Mr. Lynton: What is it you want?

Mr. Williams: The stipulation I ask is if you agree you will not contend that that word does not include understandings and agreements.

Mr. Lynton: Are you asking the Court for leave to amend your complaint?

1192 Mr. Williams: I am asking for a stipulation first.

Mr. Lynton: You are asking me to do something with respect to the construction of the language of your complaint. I am not going to alter the pleadings unless you want to amend them.

If you want to amend them, I will permit you to amend them so far as my action has any influence on the Court.

Mr. Williams: Do I understand you will stipulate then?

Mr. Lynton: I did not say that. I say I am not going to attempt to place a construction on your pleading, or attempt to indicate I will not contend in one direction or another.

Mr. Williams: I will consider your refusal to answer as not stipulating.

At this time then we move to add, after the word "contracts" in this particular phrase, and wherever it appears in the complaint, the words "understandings and agreements" in order to conform with the evidence that was brought out this morning.

The Court: Are you asking leave to amend on its face?

Mr. Williams: Yes.

1193 The Court: Motion allowed.

Mr. Lynton: And may it be noted that the answers of the respective defendants with respect to that particular paragraph of the amended complaint may be permitted to stand even as that paragraph is amended?

The Court: It is so ordered.

Mr. Williams: My motion is limited to paragraph 18, wherever the phrase appears.

Mr. Lynton: I am not going to have the pleadings indefinite. You mentioned the paragraph.

Mr. Williams: Suppose we check this over this noon, and we will be more definite in the paragraphs later on.

The Court: Very well.

Mr. Hotchkiss: Your Honor, Government's Exhibit No. 280 has a certain handwritten notation at the bottom of it. I ask the defendants to stipulate, subject to their check, that that handwriting is in Mr. Hogan's handwriting.

Mr. Lynton: The defendants will so stipulate subject to correction and subject to defendants' objections.

Mr. Hotchkiss: Will you mark this for identification Government's Exhibit 484?

1194 (Said document was marked Government's Exhibit 484 for identification.)

Mr. Hotchkiss: I now offer in evidence what has been marked for purposes of identification as Government's Exhibit 484, consisting of a letter signed by M. L. Middlekauff of the firm of Kirkland, Fleming, Green & Martin to the Yellow Cab Company, dated August 2, 1933.

Mr. Lynton: This is one which you did not have in the book?

Mr. Hotchkiss: It is one which is not in the book.

Mr. Lynton: There is no objection made with respect to authenticity. The defendant, Yellow Cab Company, objects, however, on the ground this is a privileged communication between itself and its counsel.

In addition to that, all the defendants interpose their standing objections on the basis of competency and materiality.

The Court: Same ruling.

(Said document, so offered and received in evidence, was marked Government's Exhibit 484.)

1195 Mr. Hotchkiss: I read from page 3, from the first full paragraph at the top of page 3 of this letter:

"We have no knowledge as to whether or not the 50,000 shares of Chicago Yellow Cab Company stock which the Parmelee Transportation Company proposes to sell to your corporation is all or substantially all of its property. We have, however, as attorneys for Yellow Cab Company and Chicago Yellow Cab Company, been served with notice by attorneys for Checker Cab Manufacturing Corporation, which purports to own a majority of the capital stock of Parmelee Transportation Company, that as such majority stockholder it objects to the sale by the Parmelee Transportation Company of said shares of stock of Chicago Yellow Cab Company, Inc., and that in the event such sale is authorized by the Board of Directors or is made by the officers of the Parmelee Transportation Company, action will be taken, either to enjoin said sale or set the same aside, and also action taken against your corporation for the purpose
1196 of preventing such purchase by you or setting the same aside if the same is accomplished."

I ask that this document be marked Government's Exhibit 485 for identification.

(Said document marked Government's Exhibit 485 for identification.)

Mr. Hotchkiss: I now offer in evidence what has been marked for identification as Government's Exhibit No. 485, consisting of a memorandum of agreement dated August 10, 1933, entered into between Morris Markin and Cord Corporation, signed by Morris Markin, and on behalf of the Cord Corporation by R. S. Pruitt, Secretary. I read certain portions of that.

Mr. Lynton: So far you have just offered it into evidence. I have a few objections.

Mr. Hotchkiss: Very well.

Mr. Lynton: I will not object on the ground of authenticity. However, all the defendants object to this document as being immaterial.

The Court: Same ruling.

(Said document, so offered and received in evidence, was marked Government's Exhibit 485.)

1197 Mr. Hotchkiss: Paragraph No. 1 reads as follows:

"1. Morris Markin and Cord Corporation agree to form and hereby do form a syndicate for the purpose

of acquiring control of and dealing in the stock of Checker Cab Manufacturing Corporation, a New Jersey corporation, such syndicate to continue for a period of two (2) years from the date hereof unless earlier terminated as hereinafter provided."

Then there are certain further—

Mr. Lynton: I think you ought to read this whole document.

Mr. Hotchkiss: I will be very happy to read the whole document.

"Markin agrees to transfer and hereby does transfer to the syndicate the option dated May 20, 1933, as amended, and extended, he holds from Laird & Co. expiring August 15, 1933, to purchase 58,837 shares of Checker stock at 7 a share, and agrees to assign and hereby does assign to the syndicate 6,500 shares of Checker stock at the price of $7 a share.

"3. Cord Corporation agrees to make available
1198 to the syndicate, and hereby loans to the syndicate the sum of $411,859, which shall be used to exercise said option and purchase said 58,837 shares of stock at $7 a share.

"4. All the profits and losses of the syndicate shall be shared equally between the parties hereto, and all the commitments of the syndicate shall be likewise so shared. The syndicate shall be managed by Cord Corporation, which shall have sole discretion to buy, sell and trade in Checker stock for the account of the syndicate.

"5. Markin also agrees to deposit and pledge with Cord Corporation all shares of the Class A Stock of The Waverly Corporation owned by him and P. C. L'Amoreaux (the same being not less than 70% of said Class A Stock), and all shares of the Common Stock of Cab Sales & Parts Corporation owned by him and P. C. L'Amoreaux (the same being not less than 97% of said stock), and Cord Corporation shall have the exclusive right to vote said stock as well as all Checker stock owned by the syndicate for the period of this agreement.

1199 "6. During the period of this agreement the directors of Checker Cab Manufacturing Corporation shall be E. L. Cord, L. B. Manning, W. H. Beal, R. S. Pruitt, Markin, J. A. King and R. E. Oakland; E. L. Cord shall be Chairman of the Board; Markin, Presi-

dent; W. H. Beal, Chairman of the Executive Committee, which shall consist of W. H. Beal, Markin and L. B. Manning, and Cord Corporation shall have the right to name the secretary and have the custody of the corporate records of Checker Cab Manufacturing Corporation."

Mr. LYNTON: Now, for the purpose of identification, will you stipulate that Messrs. E. L. Cord, L. B. Manning, W. H. Beal and R. S. Pruitt are persons named by the Cord Corporation?

Mr. HOTCHKISS: If that is the fact, I will so stipulate.

Mr. LYNTON: It is the fact. They are the four out of seven of the directors that Cord named.

Mr. HOTCHKISS: (Reading):

"Markin also agrees that, if Cord Corporation so requests at any time, he will to the fullest extent of
1200 his ability cooperate in every possible way to put representatives of Cord Corporation in control of Parmelee Transportation Company, Chicago Yellow Cab Company, Inc., Checker Taxi Company, The Waverly Corporation, Cab Sales & Parts Corporation and The Transportation Management Corporation. The parties hereto agree to take all action necessary to effect the election of the officers and directors provided for in this paragraph.

"7. During the period of this agreement the compensation of Morris Markin and P. C. L'Amoreaux from any subsidiary or affiliated companies of Checker Cab Manufacturing Corporation and/or Parmelee Transportation Company shall not be increased without the written consent of Cord Corporation.

"8. When, as a result of the operations of the syndicate, there shall be repaid to Cord Corporation the money advanced by it, to wit, $411,859, and there shall be repaid to Markin $45,500, being the agree value of the 6,500 shares of Checker stock contributed to the
1201 syndicate by him, this agreement shall terminate and the balance of the Checker stock and cash then owned by the syndicate shall be divided equally between the parties hereto, except that, in view of the fact that Markin was to contribute to the syndicate 10,000 shares of Checker stock and instead of so doing only contributed 6,500 shares, the Cord Corporation in the final division shall receive 3,500 shares more of said stock than Markin, or, at Markin's election, he shall pay Cord

Corporation for 1,750 of said 3,500 shares the average price received on the liquidation and sale of the Checker stock owned by the syndicate, and, in either case, Markin shall receive a credit for said 3,500 shares of stock at the agree valuation of $7 per share.

"9. If the syndicate shall not be wound up under the provisions of paragraph 8 prior to two years from the date hereof, Markin shall thereupon pay to Cord Corporation the net amount of money advanced by it to the syndicate plus interest thereon at the rate of
1202 6% per annum, and shall be entitled to have delivered to him all the securities in the syndicate and the stock of The Waverly Corporation and of Cab Sales & Parts Corporation pledged to Cord Corporation hereunder; if Markin shall fail to make such payment within thirty days after demand, Cord Corporation may sell, at public or private sale without further notice or advertisement, all or any part of said securities, and after crediting the proceeds to the expenses of such sale and to the balance due by Markin to pay the over-plus, if any, to Markin, but Markin shall remain liable for any deficiency. The syndicate, or any member thereof, shall have the right to bid for such securities at any sale, free from any right of redemption.

"10. This agreement and the rights hereunder shall not be assignable by any party hereto without the written consent of the other first had, but this agreement shall inure to the benefit of and be binding upon the successors, legal representatives and assigns of the parties hereto."

1203 Entered into August 10, 1933.

Now, your Honor, I wish to call your attention at this time to the fact that Government's Exhibits Nos. 1, 2 and 3 were admitted on a more limited basis than the subsequent government exhibits, those first ones being admitted only as to the parties thereto. I move at this time that those three exhibits be received in evidence on the same basis as the other exhibits have been received.

Mr. LYNTON: By that you mean subject to the standing objections of the defendants as to materiality?

Mr. HOTCHKISS: Yes.

The COURT: Well, the court will continue through and make the ruling uniform throughout.

Mr. HOTCHKISS: Government rests.

THEREUPON THE GOVERNMENT RESTED ITS CASE.

Mr. LYNTON: If the Court please, the defendants have some preliminary motions with respect to the documentary material offered by the government in this action.

1204 First, the defendants move to strike from the evidence Government's Exhibit 168, which consists of a letter on the letterhead of Keehn, Poust & Keeley, Attorneys and Counselors at Law, dated August 2, 1933, addressed to Yellow Cab Company.

The defendants so move on the ground that this letter is incompetent. It was received subject to connection by the Government. The Government has not only failed so to connect the document, but as a part of the affirmative testimony adduced by the Government, it appears that Messrs. Keehn, Poust & Keeley were never employed by Checker Cab Manufacturing Corporation or by Mr. Markin. There is nothing in the record to indicate who they were or under what authority they may have been purporting to act.

The COURT: May I interrupt? Is the Government opposing this motion?

Mr. HOTCHKISS: Yes, your Honor, the Government is opposing it.

The COURT: My recollection is that you failed to identify it in the line that counsel suggests, namely, that this firm of lawyers had any connection with the defendants whatever.

1205 So for that reason they cannot be bound by anything some outsider or third party has written.

Mr. HOTCHKISS: I offer it on this basis. Mr. Markin testified that he did not retain Keehn, Poust & Keeley. Somebody apparently retained them.

Mr. LYNTON: We don't know that.

Mr. HOTCHKISS: May I continue, please?

Someone retained them. That firm did write a letter to Yellow Cab with a copy to Kirkland, Fleming, Green & Martin.

Mr. LYNTON: We don't even know that.

Mr. HOTCHKISS: Stating certain facts, and advising that their client, Checker Cab Manufacturing Company, is the majority stockholder of the Parmelee Company, and that as such majority stockholder, it objects to the sale by the Parmelee Company of said shares of stock.

Now, I turn to Government's Exhibit 484, which has just been introduced in evidence.

Now, it is dated August 2, 1933, the same date as this Keehn, Poust & Keeley letter, which is Government's Exhibit 168.

Now, this is a legal opinion written by a member
1206 of the firm or someone in the firm of Kirkland, Fleming, Green & Martin to the Yellow Cab Company, and they refer specifically to this letter.

The COURT: Not specifically.

Mr. HOTCHKISS: I read what they say:

> "We have, however, as attorneys for Yellow Cab Company and Chicago Yellow Cab Company, been served with notice by attorneys for Checker Cab Manufacturing Corporation, which purports to own a majority of the capital stock of Parmelee Transportation Company, that as such majority stockholder it objects to the sale by the Parmelee Transportation Company of said shares of stock of Chicago Yellow Cab Company, Inc."

That is the objection which is made in the Keehn, Poust & Keeley letter. And I proceed:

> "And that in the event such sale is authorized by the board of directors or is made by the officers of the Parmelee Transportation Company, action will be taken either to enjoin said sale or set the same aside, and also action taken against your corporation for
1207 the purpose of preventing such purchase by you or setting the same aside if the same is accomplished."

Now, I submit, your Honor, that this Keehn, Poust & Keeley letter of August 2, 1933, which bears on its bottom, at the end, the notation: "Copy to Kirkland, Fleming, Green & Martin, Counsel for Yellow Cab Company," I submit that that letter was received by Kirkland, Fleming, Green & Martin, that firm; that that firm treated that letter as coming from the attorneys for Checker Cab Manufacturing Company, whoever may have retained that firm.

Now, I think it has been brought out during the course of the cross examination that for a period of a few days Mr. Markin did not hold his customary office in the Checker Cab Manufacturing Company, although apparently his pay continued, and he had a certain nominal position.

Nevertheless, he was out of control during that period of time. And the Kirkland, Fleming, Green & Martin letter, Government's Exhibit 484, shows that the firm representing Yellow Cab Company did treat this communication, and I submit there can be little question from the examina-

tion of the two documents that Kirkland, Fleming,
1208 Green & Martin did refer to this Keehn, Poust & Keeley letter, and did receive it, as being the letter from the attorneys for Checker Cab Manufacturing Company, and did treat it as such, and did act on it as such, and did make recommendations to their client, Yellow Cab Company, on that basis.

Mr. LYNTON: If your Honor please, I think what the Government has stated in brief is because another exhibit—it appears that a letter was received by the Kirkland-Fleming firm, which may be this letter, but it does not make Government's Exhibit 168 competent.

A letter may come in from any and all persons, whether it is authenticated, or whether representing somebody or not, somebody for Kirkland-Fleming received such a letter, and indeed even wrote a letter to Yellow which may have touched on this letter, certainly does not make the Keehn Poust Keeley letter competent with respect to anybody in this case.

And certainly, in the face of affirmative proof, not merely that Mr. Markin did not employ this firm, but that Checker Cab Manufacturing Company never employed this firm, and that neither Mr. Markin nor the Checker Cab
1209 Manufacturing Company knew of this firm is absolutely no basis of competency.

Mr. HOTCHKISS: Your Honor, I interrupt at this point.

Counsel has just made a statement which I think is not borne out by the evidence, as I recall it.

I believe he made the statement that the evidence shows that this firm, Keehn, Poust & Keeley, was never employed by Checker Cab Manufacturing Company.

The COURT: I think that is what Mr. Markin said.

Mr. LYNTON: That is right.

Mr. HOTCHKISS: I understood Mr. Markin to say that he had not employed them.

The COURT: I think he also went further and said the company had not employed them.

Mr. HOTCHKISS: That he personally did not know.

The COURT: I think he also said the company did not employ them. If you refer to the transcript, I think you will find I am right.

It appears to me that this document is not admissible, and I sustain the objection to Government's Exhibit 168, the Keehn letter.

Mr. HOTCHKISS: Very well.

1210 Mr. LYNTON: I move to strike Exhibit 201, which consists of a purported letter from Helen Logan to Mr. Markin on the ground that it is incompetent and no basis for connection or identification has been offered by the Government.

The COURT: What page is that on?

Mr. LYNTON: 292, your Honor.

The COURT: What exhibit number?

Mr. LYNTON: 201.

The COURT: Letter from Helen Logan to Markin:

"We are pleased to enclose herewith proxy signed by L. A. Kelley for the stockholders' meeting of Chicago Yellow Cab Company, Inc., to be held May 15, 1945."

What is the basis for your motion?

Mr. LYNTON: The motion is that it has not been established that Helen Logan wrote this letter, or that it was received.

All we had is the purported letter without any foundation whatever.

Mr. HOTCHKISS: Your Honor, we have some testimony by Mr. Oakland. I asked him if he knew who Helen Logan was. He said Helen Logan was the secretary of Mr. Pruitt, and Mr. Pruitt was a director of Checker Cab Manufacturing Company.

1211 Mr. LYNTON: That is all the testimony you have on this, is that right?

Mr. HOTCHKISS: No.

Mr. LYNTON: Those are the only foundational facts the Government has with reference to this exhibit.

Mr. WILLIAMS: Are you questioning the authenticity of the signature? I understood that was admitted.

Mr. LYNTON: I don't recall whether we obliged you in that respect or not, but apart from the question of authenticity, I do not think you have laid any foundation.

The mere fact that Helen Logan was secretary to Mr. Pruitt, and Mr. Pruitt was at that time a director of Checker, and Mr. Pruitt at that time being a designee of Cord Corporation, to help you out a little bit more, does not mean that this letter has any competency.

Mr. WILLIAMS: We also have a letter dated a few days after this one. This letter is dated April 28, 1945. We have a letter dated May 4, 1945, which is Exhibit 200, on the preceding page, from Mr. Bieze, Treasurer of Chicago Yellow, to Markin, in which he says—it appears on page 292—

1212 "The proxy of Parmelee Transportation Company covering 75,930 shares and the proxy of L. A. Kelley covering 24,287 shares, have not been received."

Then we find that this letter addressed to Mr. Markin shows that the proxy came through Mr. Pruitt's office to Mr. Markin, and this Exhibit 201 shows it went on through.

Mr. LYNTON: Maybe we can simplify this. Do you want to show by this exhibit that the proxy was sent?

Mr. WILLIAMS: That the proxy was received. It went through Mr. Pruitt's office to Mr. Markin, to Mr. Bieze.

The COURT: I think it is admissible. I will overrule the objection.

Mr. LYNTON: I move to strike Government's Exhibit 434, which consists of a purported letter from the Chairman of the Western Passenger Association—

Mr. HOTCHKISS: That is the one we withdrew this morning.

The COURT: Then that settles that argument.

Mr. LYNTON: Your Honor, my co-counsel has indicated we have a lot of objections and it is nearly
1213 lunch time.

The COURT: It is going to be necessary for the Court to recess at three, and I will ask you to come back a little earlier.

(Thereupon a recess was taken to 1:30 o'clock p. m. of the same day, June 3, 1948.)

1214 No. 46 C 1339

UNITED STATES OF AMERICA, PLAINTIFF,

vs.

YELLOW CAB COMPANY, *et al.*, DEFENDANTS.

Before Judge LaBuy

Thursday, June 3, 1948,
1:30 o'clock p. m.

Court met pursuant to recess.

Present:

Mr. Hotchkiss
Mr. Williams
Mr. Lynton
Mr. Ginsberg
Mr. Fuller
Mr. Climenko

Motion to Amend Complaint

Mr. WILLIAMS: I will make my motion to amend the complaint to make it more definite, as I stated this morning, to move the words "agreements and understandings" be inserted following the word "contracts," wherever the word "contracts" appears in the following Paragraphs of the amended complaint:

Paragraphs 3(c), 5, 8(c), 18, 19(c), 19(i) and sub-section 2 of Paragraph 53.

1215 The COURT: Any objection?

Mr. LYNTON: No objection, sir.

The COURT: Motion is allowed.

Mr. LYNTON: May the answers of the respective defendants to the amended complaint be deemed to stand with respect to that complaint as further amended by the government at this moment?

The COURT: It is so ordered.

Defendants' Motions to Strike

Mr. LYNTON: Each and all the defendants move to strike from the evidence as irrelevant and immaterial the following exhibits offered by the government:

Exhibits 39, referring to the status of Parmelee's investment in the two Pittsburgh taxicab companies;

40 through 45, referring to the so-called acquisition of DeLuxe;

47 through 59, relating to DeLuxe and Chicago Cab companies;

67 and 68, relating to certain purported tax consequences of Parmelee's purchase of stock of Motor Cab Transportation Corporation;

73 through 76 and 78 through 82, referring to inter-corporate loans;

1216 84 through 94, referring to the settlement of the suit between CCM and Checker;

95 through 125, referring to the loans by Benzoline and Waverly to Cab Sales;

126, referring to a loan of Yellow to Cab Sales in 1942;

127, referring to a CCM loan to Cab Sales;

128 through 131, referring to Cab Sales lease of Chicago Cab licenses from Checker in 1942;

132, referring to the purchase by Freemark & Co. of stock of Checker;

133 through 138, referring to correspondence from Mr. Oakland concerning records of Cab Sales;

139 through 185 and 187 through 193, and 484, referring to the sale and repurchase by Parmelee of Chicago Yellow shares;

194 through 209, referring to the Waverly Corporation;

233 through 237, concerning Utilities Motor Fuel Company and its sale of gasoline;

238 through 261, concerning stock ownership of General Transportation Casualty & Surety Company;

1217 262 through 268, concerning Transportation Maintenance Corporation;

269 through 296, concerning various miscellaneous and unrelated corporate activities, including, for example, declaration of dividends;

297 through 306, concerning Automotive Sales Corporation;

325 and 326, concerning cab operations in Boston, Massachusetts;

331 and 332, concerning cab operations in Valley Mills, Texas;

336 through 346, concerning various statistics of cab operations within Chicago;

352 through 355, concerning proposed consolidation of the taxicab companies in Chicago, which never eventuated;

356 through 377, 379 through 396 and 398 through 422, concerning the reduction of licenses by the City of Chicago;

474 through 481, concerning Chicago licenses;

481, concerning Minneapolis licenses;

482 and 483, concerning cabs licensed but not operated in Chicago; and

1218 484, concerning the syndicate between Cord Corporation and Mr. Markin.

The COURT: Do you wish to be heard in opposition?

Mr. HOTCHKISS: The government objects.

The COURT: The motion is overruled.

Mr. LYNTON: Each and all of the defendants move to strike from the evidence as incompetent the following exhibits introduced by the government:

39, a letter purportedly signed by Mr. Wyatt which refers to a time when he was not connected with Parmelee;

49 through 52, concerning correspondence to and from Chicago Cab Company;

177, concerning a personal letter by Mr. Hogan to a Mr. Sawyer;

416 and 417, concerning certain correspondence between a Mr. Cloud and Mr. Samuels; and

418 and 419, concerning certain correspondence between a Mr. Dudley and Mr. Samuels.

The COURT: Is that all in that group?

Mr. LYNTON: That is all in that group, sir.

Mr. HOTCHKISS: The government objects.

The COURT: The motion is overruled.

Mr. LYNTON: Each and all of the defendants re-
1219 new their objection and move to strike from the evidence with respect to themselves each and all of the documents offered by the government which were not prepared by the respective defendants, on the ground that the plaintiff has failed to show a conspiracy or to connect any of those documents with any alleged conspiracy and, accordingly, none of the defendants is bound by any of the purported acts of the other defendants.

Mr. HOTCHKISS: Have you completed that group?

Mr. LYNTON: Yes.

Mr. HOTCHKISS: The government objects.

The COURT: The motion is overruled.

Defendants' Motion to Dismiss

Mr. LYNTON: Pursuant to Rule 41(b) of the Rules of Civil Procedure, each and all the defendants move to dismiss this action and each and all of the claims in this action, on the ground that upon the facts and the law the plaintiff has shown no right to relief.

I may state with respect to this motion that the claims contained in the amended complaint are two in number, under the opinion of the Supreme Court in this case.

The third claim contained in the original complaint
1220 was deleted with respect to the charge under the instructions of the Supreme Court, although further reference will be made in another connection later to that.

Remaining in this case are two claims: The first claim, with respect to interstate sales of cabs, and the second, with respect to the transfer of passengers and baggage between railroad stations in the city of Chicago.

With respect to the second claim, that referring to the transfer of passengers and baggage, the transfer business of Parmelee, the Supreme Court in its opinion in this case construed the complaint as a matter of pleading to allege that, and I quote,

> "Only Parmelee is free to attempt to procure such contracts"—

meaning under the allegations of the complaint, exclusive contracts with the railroads or railroad associations.

> "Yellow," and I am now continuing to quote, "and Cab Sales are forbidden to compete for such contracts, despite the fact that they conceivably might provide the same transportation service at lower cost to the railroads."

1221 On this construction the Supreme Court sustained the original complaint as a matter of pleading, but it added this footnote:

> "The District Court thought that Parmelee's equipment and services are so totally different from the taxicab business of Yellow and Cab Sales as to make competition for the contracts impractical and unlikely. But that is a matter for determination at the trial on the merits and does not negative the sufficiency of the complaint."

The defendants contend that the government as a matter of proof has utterly failed to suggest any conspiracy among the defendants with respect to this claim of the complaint and, additionally, that it appears affirmatively from the proof introduced that there was no conspiracy and that Parmelee's equipment and services are totally different from the taxicab business of Yellow and Cab Sales, and that competition by those companies for any purported contracts with the railroads are impractical and unlikely.

The defendants therefore, in accordance with my
1222 previous statement, move to dismiss the complaint in its entirety, and also with respect to each of the separate claims contained in that complaint.

Mr. HOTCHKISS: The government opposes the motion.

The COURT: The motion is overruled.

Mr. LYNTON: If your Honor please, at this time the defendants, pursuant to the privilege reserved by this court, would like to make their opening.

Opening Statement on Behalf of Defendants

By Mr. LYNTON:

I shall treat in this opening the development and the object of this action, the boundaries charted by the Supreme Court, within which this case falls, and an outline of the proof.

The investigation by the government which led to the commencement of this action was begun on February 18, 1946, within two weeks of the decision by Judge Feinberg in the suit, Yellow Cab Company against City of Chicago, in which Judge Feinberg held, first, that the license rights of Yellow and Checker under the 1937 ordinance were valid and, second, that no monopoly existed since
1223 the number of the licenses and the rights of the licensees were subject to the control of the City of Chicago.

The original complaint was obviously and patently an attack on the license rights of Yellow and Checker, and perhaps the most apparent indication of that is seen in the first substantive prayer for relief in that complaint.

That prayer read that the defendants be required to release and waive any and all right they may have or claim to have under the ordinance of the City of Chicago of December 22, 1937, and its extension, to secure additional taxicab licenses in excess of the number now held by Yellow and Checker.

The difficulty besetting the government on its original complaint, directed as it was to a local situation, was how to obtain federal jurisdiction, and the conception was evolved that the taxicab services in the City of Chicago were an adjunct to railroad transportation.

To spread some color of interstateness, the interstation transportation of Parmelee was combined with the
1224 services of Yellow and Checker under a common allegation in the original complaint using the word "cab," even though the services of Yellow and Cab Sales were fundamentally different from and indeed incompatible under the ordinances, with the services of Parmelee.

Likewise linked, to lend some color of interstateness to the taxicab services in Chicago, were the purchases of

taxicabs by the Chicago taxicab operating companies from Checker Cab Manufacturing Corporation, a Michigan manufacturer.

On the motion to dismiss in this court the primary argument was directed to the furnishing of cab services in Chicago, and the Parmelee interstation services were made a part of that argument. The sales of cabs were completely subordinated and were linked to the license positions of Yellow and Checker in Chicago.

The motion to dismiss was sustained in its entirety by this court, and on appeal was sustained in part by the Supreme Court.

Removed was the primary object of the complaint,
1225 the furnishing of taxicab services in the City of Chicago, and left as a matter of pleading were the appendages, the sales of cabs and Parmelee's interstation business.

1226 On the direction of the Supreme Court to delete references to the local taxicab services, the Government served an amended complaint modifying the form of its charging paragraph, but not the substance of the original complaint. And the various allegations relating to local services contained in the original complaint were continued in the complaint.

In their answers, the defendants pleaded affirmatively that to the extent that the amended complaint asserted charges and contained allegations of the taxicab services within the ordinances of the City of Chicago, it failed to comply with the mandate of the Supreme Court.

Pending appeal from the decision of this Court on that motion to the United States Supreme Court, the Illinois Supreme Court affirmed the decision of Judge Feinberg. Nonetheless, the amended complaint asks, in the very terms quoted above from the prayer in its original complaint that Yellow and Checker release their rights under the 1937 ordinance to secure additional taxicab licenses.

From this brief review of the development, and
1227 the object of this action, merged three central points.

First, an attack by the Government derived from, and it is still directed to the local license positions of Yellow and Checker.

Second, in order to sustain its complaint, as a matter of pleading, the Government has indulged in speculative conjecture, conjured in theoretical ivory tower forms which have attempted, and I charge, facts having no relationship to the color of the interstates in their original pleadings.

and which have no relationship to the theoretical or actual facts of this controversy.

The third, curiously, this inversion by the Government results in placing the Government in a very peculiar position of championing, as against Checker Cab Manufacturing Company, an extremely small automotive manufacturer, the great automotive manufacturers in this country, General Motors, Chrysler and Ford and those industries, with respect to the aspect of sales, is now an attempt by the Government to further the position of the dominant manufacturers.

The Supreme Court chartered the boundaries within which this case remains. In sustaining the complaint,
1228 purely as a matter of pleading, the Supreme Court said, and I am quoting, first:

"The theory of the complaint to borrow language from United States against Reading Company, 253 U. S., 2657, is that dominating power over the cab operating companies was not obtained by normal expansion to meet the demands of business growing as the result of superior and enterprising management, but by deliberate calculated purchase for control.

"Second, if that theory is borne out by the evidence, coupled with proof of an undue restraint of interstate trade, the plain violation of the Act has occurred."

The Supreme Court further said:

"The fact that these restraints occur in a setting described by the appellees as a vertical integrated enterprise does not necessarily remove the ban of the Sherman Act. The test of legality under the Act is the presence or absence of unreasonable restrain on interstate commerce."

In United States v. Paramount Pictures, Incorporated, decided May 3, 1948, the Supreme Court reviewed the
1229 vertical integrations of the five major national motion picture companies. Those companies combined as a vertical integration these functions: The function of producing pictures, distributing pictures, and exhibiting its pictures in theatres throughout the United States.

The Supreme Court said in that case, upon facts which are so far beyond the realm of the facts in this case with respect to the scope of the industry and the relationship of the national motion pictures in that industry this:

"In the opinion of the majority, the legality of vertical integration under the Sherman Act turns on:

"1, the purpose of intent with which it was conceived, or

"2, the power it creates, and the attendant purpose or intent.

"First, it runs afoul of the Sherman Act if it was a calculated scheme to gain control over an appreciable segment of the market, and to restrain or suppress competition rather than the expansion to meet legitimate business needs.

"Secondly, vertical integrated enterprises like
1230 other aggregations of business units will constitute a monopoly which, though unexercised, violates the Sherman Act, provided a power to exclude competition is coupled with a purpose or intent to do so."

Likewise bearing on the question whether monopoly power is created by the vertical integration is the nature of the market to be served, and the leverage of the market which the particular vertical integration creates or makes possible.

Thus, under the theory of the complaint that is expounded in this case by the Supreme Court and is amplified in the Paramount case, no violation of the Sherman Act occurs with respect to the sales of cabs unless there was a deliberate calculated purchase for control, intentionally conceived and planned to restrain and suppress competition.

The question of intent, the original intent in the formation, and the continuance of that intent is the test.

And then, further, quite apart from the question of intent, no violation of the Sherman Act occurs unless there are actual restraints, and unless those restraints are,
1231 under all the circumstances, deemed unreasonable.

The proof in this case will clearly show that no such plan of conspiracy was conceived or occurred, and that no such restraints were exercised.

With respect to Parmelee's interstation transfer business, the Supreme Court, as I have mentioned on the motion to dismiss the complaint at the conclusion of the Government's case, construed the complaint to allege that only Parmelee was free, as a matter of conspiracy and arrangement, to obtain the arrangements with railroads and railroad associations, which would permit the conduct of the interstation business.

And I have referred to the footnote in the opinion of the Supreme Court which shows that if the equipment and services are different, and if competition is impractical or

unlikely, or if, in fact, there was no conspiracy or concertive action to restrain, that there was no cause of action.

The proof in this case has shown, and will show that there was no such prohibition with respect to Cab Sales or Yellow, that there was no discussion of conspiracy

1232 with respect to them, and that their business is so radically different from the business of Parmelee that as a matter of normal practicalities, business competition was unlikely.

In considering the proof which will be adduced by the defendants, I should like briefly to trace the charges made by the Government, and the proof which will show the actual facts.

The Government charges that a conspiracy was made in January, 1929, and I should like first to look at the situation as of 1929.

Consider first, if you will, Yellow. The inception of the Yellow organization was in 1910.

During the period from 1910 to 1929—and I am speaking generally, the executive direction and the share control was in Mr. John B. Hertz. Included within that enterprise was several companies.

One of those companies was originally the Waldon W. Shaw Livery Company, which later changed its name to Yellow Cab Manufacturing Company. That company during the years before 1929 manufactured a purpose built cab.

1233 Another corporation within this Yellow structure was Yellow Cab Company, a company which operated taxicabs. That company purchased its purpose built cabs before 1929 from Yellow Manufacturing Company.

Beginning sometime in the middle 1920's, Mr. Hertz determined to withdraw from the taxicab field, and that was evidenced in the first instance by the sale, in 1925, to General Motors Corporation of Yellow Cab Manufacturing Corporation.

General Motors Corporation changed the name of that company in 1925 to Yellow Truck and Coach Company.

That company, within a very short time, transferred its plant from Chicago to Pontiac, and began to engage primarily in the business of truck and bus manufacture.

Somewhat later the name of that company was changed to General Motors Truck Corporation. Not only did Mr. Hertz thus sell his manufacturing company to General Motors, but he also determined to withdraw from the taxicab operative field.

However, a few years before 1929, Mr. Hertz en-
1234 deavored to find purchasers for the two companies in which he was interested. One of those was Yellow in Chicago, and the other one was Yellow Taxi Corporation, New York.

The executive direction of Yellow Taxi Corporation, New York, before 1929, was in the hands of Mr. Ernest H. Miller, who was an important and well known figure in those days in the field of taxicab operation.

The executive direction of Yellow in Chicago, immediately before 1929, was under Mr. Charles A. McCullough, and Mr. McCullough at that time was also Chairman of the Board of The Parmelee Company, which, as your Honor will recall, is distinguishable from Parmelee Transportation Company.

Mr. McCullough had been associated, and had an important share interest in The Parmelee Company for many years.

Thus, as we approach the year 1929, we find, with respect to Yellow, consisting of the manufacturing corporation and two taxicab operating companies in Chicago and New York, first a withdrawal by actual sale of the manufacturing Corporation, and secondly a proposed dis-
1235 position of all interest in the taxicab field.

I would like now to place the Checker Cab Manufacturing Corporation in 1929. That corporation had an immediate predecessor, a company of the same name, which was incorporated in 1922 in Delaware.

In 1923, that corporation was incorporated under the laws of New Jersey and simultaneously with the second corporation, there was a public issue of the securities under the underwriting firm of Block Maloney & Company.

Checker Cab Manufacturing Company, or to use the Government's abbreviation, CCM, resulted in the activities of a group in Chicago, starting in 1929, attempted to compete with Yellow for the Chicago taxicab business.
1236 That group formed the Checker Taxi Company.

Yellow, in those days had a purpose-built cab manufactured by Yellow Cab Manufacturing Company. Checker determined that instead of competing as a group of individuals having separate names with cabs running under varied colors, and under varied makes, that it could best compete by having a standard cab under the common name of Checker, and under a uniform color. That essentially was the springboard from which Checker Cab Man-

ufacturing Corporation obtained its first orders and made its first sales.

CCM continued in that manufacture to the year 1928, when it startled the taxicab world by introducing the now famous Model K cab, which from the point of efficiency and appearance captured most of the market in the city of New York among independents; and its sales were such as to attract the attention throughout the taxicab world that day.

Mr. Markin in April, 1929, which is the month during which Parmelee Transportation Company was or-
1237 ganized, was president of CCM, but he owned only 12 per cent of the stock of CCM. The government charges that in 1929, Mr. Markin and CCM, calculatedly and designedly caused Parmelee to be organized to acquire operating companies to compel them to buy CCM cabs, and that Mr. Markin, CCM and Parmelee therefore constituted a so-called control group. What are the facts?

Parmelee was formed April 12, 1929. Its securities were publicly issued by an underwriting syndicate headed by the firm of J. A. Sisto & Co. The securities consisted of five million dollars of debentures, one million dollars of preferred shares and 250,000 common shares of the value of $4,600,000.

The only voting stock was common shares. The preferred had no voting rights whatever. CCM, after the formation of Parmelee, bought only preferred stock, and therefore was without any voting control, and therefore CCM was without any control over Parmelee.

And with respect to that segment of the Government's charge, we have a complete crumbling of its notion of control of the operating companies by control over Parmelee.

1238 I have mentioned in April, 1929, Mr. Markin owned 12 percent of the stock of CCM. In connection with the organization of Parmelee, he subscribed for 6 per cent of the common stock of Parmelee, and no other securities of Parmelee, and thus, Mr. Markin, neither controlled CCM nor Parmelee, and therefore the government's combined assertion that Mr. Markin and CCM acquired control of Parmelee is contrary to the facts.

I should like at this point to invite to the court's attention that the Supreme Court, on the appeal before it of the earlier motion construed the allegations of the government's original complaint contrary to the fact.

When the Supreme Court said—and I am quoting from

its opinion, which is its summarization of the allegations of the original complaint,

"Parmelee Transportation Company was organized in April, 1929 with 62 per cent of its stock being owned by CCM."

That just was not so. CCM owned preferred stock, and it had absolutely no ownership whatsoever of any voting stock.

1239 The Supreme Court's construction of the allegations of the original complaint was further contrary to the real facts when the Supreme Court said that in 1929 Mr. Markin was not only the president and general manager of CCM but also—and I quote—"the controlling stockholder of Checker Cab Manufacturing Corporation."

In fact, he owned 12 per cent of the stock.

1240 What then was the formation of Parmelee? Parmelee was formed as a result of a simple negotiation which was initiated by Mr. Ernest H. Miller. Mr. Miller was president of Yellow Taxi Corporation, New York, and in 1928 he suggested to Mr. Markin that the then interests of Yellow of New York and Yellow of Chicago desire to sell those interests, and that he and Mr. Charles A. McCulloch represented those interests.

Mr. Miller asked Mr. Markin whether Mr. Markin could aid in arranging financing for the purchase of those companies, and following were negotiations among Mr. Miller, Mr. McCulloch, Mr. Markin and J. A. Sisto & Co., under which financing was arranged through Sisto & Co., investment bankers, who caused Parmelee to be formed.

Sisto & Co. underwrote a public issue of the securities of Parmelee, and shortly after formation purchased 26 per cent of the shares of Chicago Yellow, the parent of Yellow. Those were the shares which Mr. McCulloch desired to dispose of for the then interests, 68 per cent of the

1241 shares of Yellow of New York, and those were the shares which Mr. Miller desired to dispose of for the then interests of Yellow of New York, and in connection with those negotiations Mr. McCollough, who was chairman of the board of The Parmelee Company, and had an interest of his own and represented interests in that company, also determined to sell, and sold, 96 per cent of the stock of The Parmelee Company. That was the whole deal. There was nothing more to it.

From that point forward the structure evolved was the structure arranged through the underwriters and the law-

yers and, as I have indicated, it was the underwriter, J. A. Sisto & Co., which through its own attorneys actually incorporated Parmelee Transportation Company. It was thought that to achieve economies a single staff might be installed to advise the two operating companies, and Mr. Ernest H. Miller headed that advisory staff.

Mr. Markin became a consultant to Mr. Miller. Mr. Miller at that time was president of Parmelee Transportation Company, he was president of Transportation
1242 Management Corporation, which I have described under the business characterization of an advisory staff, and he continued as president of Yellow Taxi Corporation, New York.

Mr. McCulloch continued as chairman of the board of Chicago Yellow and The Parmelee Company.

Mr. Markin had no office whatever in any of those companies. His sole office was as president of CCM.

In connection with this advisory staff the government in its opening stated that Paragraph 3 of the management contract entered into between Transportation Management and Yellow prevented Yellow from making any purchases in excess of $500. That is an absolutely incorrect statement of the terms of that paragraph of the so-called management contract. That paragraph reads, in part:

> "None of the companies or their offices shall enter into any agreements or give any orders for any such purchases for amounts involving more than $500 without either obtaining the approval of the Management Corporation or instructions from the board of direc-
> 1243 tors of the particular company for which such purchase is to be made."

There was a business point about that, and the point about it was that the underwriting group which was publicly distributing the securities and which had no intimate acquaintance with Mr. Miller or any intimate acquaintance with the existing officers and staff of Yellow in Chicago, wanted, when they issued securities of a company which in turn acquired part of the shares of those two operating companies, to be in a position to achieve economies. They did not want any particular employee or officer to make a purchase in the beginning of anything of any substance, gasoline, tires, perhaps cab equipment, anything whatever, without at least finding out something about that business.

As a matter of fact, that particular provision was really never observed. It was never observed because as soon as

the personal relations were such that knowledge of the men was obtained, they were left on their own and as a matter of pure construction, there never was any obligation on the part of either of the taxicab operating companies to
1244 receive the approval of the advisory staff.

In this manner Parmelee was born. There was no control in CCM or Mr. Markin. There were only two taxicab companies involved, and as to one of those two a minority interest, 26 per cent, the operating chief was Mr. Miller. Mr. Markin was not even an officer or director of any of them, and was connected solely with CCM. Neither Mr. Markin nor CCM had any control in Parmelee.

Mr. Markin had a relatively small minority interest in CCM during the year 1929, the year of the formation of Parmelee. Yellow of Chicago and Yellow of New York bought cabs from CCM and they bought the Model K, and they did not buy the Model K as a matter of compulsion, but because the Model K had been an outstanding achievement in 1928 and because the previous association had terminated in 1925 between Yellow Cab Manufacturing Corporation on its sale to General Motors and the General Yellow organization of that day.

In 1929 CCM sold far more Model K's to fleets and individuals in no way connected with it than it sold to these two taxicab operating companies.

1245 The government has charged in this complaint that Mr. Markin and CCM also designedly, calculatedly and with intent caused the purchase by Parmelee of two Pittsburgh companies in order to compel them to buy CCM cabs.

That argument against the facts, if the Court please, is almost ludicrous. It is ludicrous because there was no contemplation or discussion during the early negotiations for the purchase of any stock of any taxicab company in Pittsburgh. That negotiation was limited to the purchase of shares of Yellow of New York and Yellow of Chicago. Secondly, the entire Pittsburgh purchase was negotiated by Mr. Miller with the operators of Pittsburgh, and it was negotiated and arranged for against the advice of Mr. Markin, who had the opinion at that time that as a matter of its topography Pittsburgh was not a place which was suitable for the operation of taxicabs at a profit.

I may also note that of the two Pittsburgh companies, Pittsburgh Transportation Company had bought CCM cabs in 1927, and that Yellow of Pittsburgh had bought purpose-

built cabs from Yellow Manufacturing Corporation, so that it was not an entirely new customer for CCM, and the
1246 purpose-built cab displayed by CCM was one which would normally as a matter of business attract both these companies.

Skipping from 1929 to September, 1930, and passing on the march, the depression which started with the stock market crash of October, 1929, the government charges that in September, 1930 CCM acquired control of the majority of the common shares of Parmelee, and that this was part of the original conspiracy started in 1929, CCM did acquire the majority of Parmelee shares pursuant to a contract made on or about September 30, 1930.

1247 But I suggest to the Court that only a fortune teller could suggest that the events which did occur were part of a plan that was conceived in 1929.

What were the facts in September, 1930? In September, 1930, Mr. Markin owned five percent of the stock of CCM. He owned 250 common shares of Parmelee, or eight ten-thousandths of one percent.

The largest stockholder of CCM at that period was a group represented by Messrs. Raskob and du Pont. They owned in excess of 130,000 shares of CCM. Sisto & Company, the original underwriters in 1929, were in financial difficulties as a result of the stock market crash and the ensuing depression, and they had been unable to market $1,442,000 of debentures of Parmelee, and they had on their shelves 23,000 common shares of Parmelee. Shortly before September, 1930, as a result of these events CCM brought those debentures, and that minority of common shares from Sisto & Company.

Parmelee's working capital in the latter part of 1930 was low, and it was low partly because of the general
1248 and particular business conditions of that era, and it was also low because a very severe strike had occurred in Pittsburgh.

Mr. Markin in the very early part of 1929 and before Parmelee was organized, as a result of the hit that the Model K cab was making in New York, engaged in an independent fleet operation under the name of a holding company called Motor Cab Transportation Corporation. He formed that company. It was not a purchased or an acquired company. He caused its incorporation, and he started taxicab operations in New York in January, February, of 1929, under subsidiaries whose parent was Motor Cab Transportation Corporation.

The persons who actually conducted the operations for the subsidiaries of Motor Cab Transportation Company were people who had been in taxicab operations before 1929 and who had in their several individual capacities bought cabs from CCM and Motor Cab Transportation Corporation through two subsidiaries operated during the period starting January or February, 1929, through to the period of September 30, 1930, with which we are not concerned, approximately 2,050 cabs.

1249 In the summer of 1930 Mr. Raskob, representing the Raskob-du Pont group, and which was by far and away the largest stockholder of CCM, suggested to Mr. Markin that Mr. Markin dispose of his Motor Cab Transportation operations in New York, since CCM, as a result of its preferred share interest and its debenture interest in Parmelee, had an interest in Parmelee which through a New York operating company, Yellow of New York, was operating in competition with the companies which were subsidiaries of Motor Cab Transportation Company.

Mr. Raskob suggested that Motor Cab Transportation stock be sold directly to Parmelee.

Mr. Markin did not wish to receive Parmelee common shares at that time for it, and as a result the transaction was formulated on a negotiation with the Raskob-du Pont group, that the Motor Cab Transportation stock owned by Mr. Markin be transferred to CCM, and CCM then sold that stock plus all other preferred stock and debentures then owned by CCM in Parmelee to Parmelee. The debentures and preferred stock were sold as a result of suggestions of Mr. Miller. Mr. Miller, as the Court will recall, was

1250 the President of Parmelee. Mr. Miller, in view of Parmelee's financial situation during the latter part of 1930, suggested that the senior securities of Parmelee, the debentures and the preferred stock, were fixed charges which Parmelee would be aided in avoiding if those senior securities were exchanged for purely equity securities of Parmelee, and that was the way that situation developed, and those were the circumstances under which that transfer was made.

There is a slight commentary perhaps on this Motor Cab Transportation transaction which occurred in September, 1930, which had some indication in the Government's direct case.

The Raskob-du Pont group, which were, as I have said, the largest stockholders of CCM, by far and away, in Sep-

tember, 1930, continued to be such for quite a time. A securities company called Laird, Bissell & Meade, and sometimes referred to in some of the exhibits which have thus far been produced, as Laird & Company, represented the du Pont group of Wilmington, Delaware.

1251 Between 1930 and 1933 Mr. Markin had no real voting position as stockholder of CCM in relation to these groups, and in August of 1933 that group, as a result of some transaction which will be developed, actually ousted Mr. Markin from the presidency of CCM, and the situation was such that unless Mr. Markin were able to arrange to exercise an option which he then held privately on the shares owned by Laird & Company representing the du Pont group, Mr. Markin would have had no position whatever as an individual in CCM. He invoked the aid of Cord Corporation at that time. He obtained some financing, he exercised his option.

I mention that merely to indicate that the charges of the Government of original conspiracy and of original control by Mr. Markin and of original control by CCM, and of all these transactions including the depression and the Raskob-du Pont transaction, and all the other things of those days which occurred and which will be developed fully, the suggestion of the Government that all those things were part of a preconceived intentional plan, are utterly unrealistic and utterly speculative.

1252 I pass now to the Minneapolis situation. In 1931 Parmelee organized—it did not buy, but it organized—Yellow Cab Company of Minneapolis. The Government charges that that company was acquired by Mr. Markin and CCM for control, to compel that company to buy CCM cabs involuntarily.

Before 1931 Yellow Cab Corporation, a Minnesota corporation, different from Yellow Cab Company of Minneapolis, was operating taxicabs in Minneapolis. Yellow Cab Company of Minneapolis was controlled by the street railways which operated on the streets of Minneapolis. That corporation went into receivership in 1930, the operation was unprofitable. Mr. Claude Masters had been a taxicab operator in Minneapolis. During the entire period from the early 1920's to that date he had been an operator of taxicabs in Minneapolis. Mr. Claude Masters was employed by Yellow Cab Corporation of Minneapolis. He wanted to continue in the taxicab business. That was his livelihood. He had met Mr. Markin in the early 1920's because Yellow

Cab Company, with which he was then connected in the early 20's, bought CCM cabs. And so Mr. Masters came to Mr. Markin and suggested that Mr. Markin might
1253 advance some small sum for the purpose of buying such assets as the street railway company had to dispose of on the receivership sale of the Yellow Taxi Corporation, a Minnesota corporation.

Mr. Markin turned him over to Mr. L'Amoreaux, and Mr. L'Amoreaux acting for Parmelee at the very tail end of 1930, bought these assets at the receivership sale for $16,305.

After that Parmelee organized Yellow Cab Company of Minneapolis, and that company now operates 137 cabs in Minneapolis.

That ends substantially the entire so-called Parmelee structure.

Yellow Taxi Corporation of New York, which was one of the original companies whose stock was partly acquired by Parmelee, went into bankruptcy in 1934 as a result of the difficult conditions of the depression.

Earlier, Parmelee had organized—not purchased, but organized—National Transportation Company, which was a subsidiary, and that company operated some cabs in New York City. Various of the taxicab companies went into bankruptcy or liquidation during the immediate
1254 post-depression years, and at the present time National Transportation Company is the only survivor within the Parmelee structure. Parmelee now owns 29 percent of the shares of Chicago Yellow. Yellow of Chicago, whose parent is Chicago Yellow, operates 1,595 licensed cabs out of 3,000 licensed, and 950 temporarily licensed cabs in Chicago, or a gross of 1,595 out of 3,950.

Parmelee owns all the stock of National Transportation Company. Yellow of Pittsburgh, which is now one company—two other Pittsburgh companies having been merged pursuant to an order of the Public Service Commission of Pennsylvania—and Yellow of Minneapolis.

National in New York City now operates approximately 1,932 licensed cabs out of some nearly 13,000 licensed cabs in New York. Yellow of Pittsburgh operates 460 cabs out of 600 licensed cabs. Yellow of Minneapolis operates 137 cabs out of 240 licensed cabs.

1255 I turn now briefly to Checker Taxi Company. The remaining charges of the calculated purchase for intentional control to compel the purchase of CCM cabs is

directed against Checker. Its history may be briefly summarized in this fashion:

It was formed, as I mentioned, in 1919. Its original stockholders were a group of individuals who purchased cabs, owned some shares in Checker Taxi, transferred legal title to Checker, because under the then existing laws and present laws, the name of the legal owner must be displayed on the outside of the cab. And Checker performed certain services for which it received service payments. I have indicated that the original sales by CCM to Checker in the very early twenties was a springboard for CCM.

In 1925, a 5-year exclusive contract was made between CCM and Checker under which cabs of certain specifications were manufactured and required to be bought by Checker. The Checker internal management during the latter 1920's was characterized by what I may call unruly elements, and disputes occurred with respect to the
1256 purchase of cabs under this 5-year exclusive contract. That dispute was finally settled as a result of a lawsuit commenced in this court, referred by this court to a special master, with a substitution of a new 5-year contract for the 5-year contract which the special master found had been breached.

The attorney for CCM in connection with that very prolonged and very expensive litigation was Mr. Paul C. L'Amoreaux.

The arrangement between Mr. L'Amoreaux and CCM was a contingent one and as a method of paying Mr. L'Amoreaux a fee for his services in that suit, Cab Sales & Parts Corporation was formed, of which Mr. L'Amoreaux was the sole stockholder, and Mr. L'Amoreaux was to receive certain compensation on sales by CCM to the drivers of Checker during this substituted 5-year period.

It was a business arrangement under which the attorney who was successful in the suit and who had arranged the substituted contract in place of the broke contract was to be paid on the basis of his success.

1257 In 1931 the president of Checker was Robert McLaughlin, and he was a brother of Eugene McLaughlin, who was rather a notorious character in Chicago at that time, and a number of the elements within the Checker organization were, to use the same characterization in which I indulged before, unruly.

It will be observed from the opinion of the Corporation Counsel of the City of Chicago, to which I will later advert,

that during the period of the late 1920's there was a good deal of force and violence on the streets of Chicago in connection with taxicab operations.

In 1931, Robert McLaughlin determined that he wanted to get out of that, and he spoke with Mr. L'Amoreaux and suggested that Mr. McLaughlin could sell to Mr. L'Amoreaux a majority of the shares of Checker. Mr. L'Amoreaux borrowed some money personally from Mr. Markin for that. Cab Sales borrowed some money from two subsidiaries of Yellow.

There will be evidence shown with respect to that transaction, but briefly it amounted essentially to a de-
1258 sire to put the competition and operations of taxicabs in the City of Chicago on a business level instead of a level of force and violence.

During the years from 1931 to 1935 the same form of operation was engaged in by Checker. It was an operation under which the individual drivers bought their cabs, paid Checker service charges.

During that period, however, two things occurred: First, there were extraordinary arrearages piled up with respect to service charges. The drivers simply did not pay. Secondly, the drivers did not pay on their installments on the purchase prices of the cabs, with the result that cabs were abandoned unpaid or Cab Sales was required to repossess them.

In 1933, as a matter of experimentation, a so-called Shapiro fleet was introduced, and that fleet consisted of a number of cabs which were run as a unit as distinguished from the individual operations by the individual drivers.

As a result of that it was ascertained that the service charges could be paid under such a fleet operation.
1259 In 1935, Cab Sales bought 500 new CCM cabs. That was a minor portion of the number of cabs then operated by Checker, but Cab Sales operated those 500 cabs as a fleet, and within the Checker group the individuals operated their individual cabs. Between that time and 1941 the individuals dropped out, partly as a result of the difficulties of operation, their inability to pay the service charges, their abandonment of cabs, their inability to pay the installments; so that by 1941 all cabs within Checker were operated by Cab Sales.

Two incidental companies remain for mention, the De-Luxe and Chicago Cab.

The government charges that these two cabs too were part of the 1929 conspiracy.

DeLuxe Taxi Company was originally purchased by Mr. Markin in 1927, two years before the alleged conspiracy. It was purchased as a result of the unpaid installments on cab purchases which were under financing by Commercial Credit Company, and Mr. Markin personally assumed those unpaid installments to Commercial Credit. In that way the foreclosure threat was eliminated, and Mr.
1260 Markin became the owner of the stock of DeLuxe.

Before 1927 DeLuxe was a customer of CCM, and after 1927 and until 1930, when DeLuxe was sold by Mr. Markin to Parmelee, DeLuxe was a customer of CCM. And after DeLuxe was sold to Parmelee, DeLuxe bought two cabs, and they were CCM cabs.

The DeLuxe operation was in 1930 in effect transferred to Chicago Cab Corporation which was organized as a sub-subsidiary of Parmelee at that time, and the Chicago Cab operation continued for a period of a little less than two years.

During that period Chicago Cab did not buy a single cab from anybody. In 1932 the operations of Chicago Cab ceased. Obviously there is no possibility of argument on the part of the government that there was a purchase by Parmelee of the stock of the DeLuxe for the purpose of compelling DeLuxe to buy CCM cabs. It is an impossible argument because before that purchase Mr. Markin owned De Luxe and after that purchase Parmelee owned DeLuxe, and Mr. Markin, a very small interest in CCM and sub-
1261 stantially no interest in Parmelee.

I have referred to the taxicab conditions in the decade of the 1920's and the early 1930's. I should like to read one paragraph from the opinion of the Corporation Counsel, dated September 11, 1933, which was written in consideration of the ordinance hearings and investigations which were then pending:

> "In the year 1933 the taxicab business in the City of Chicago was chaotic. Vacant taxicabs were cruising the streets for passenger business. The cost of taxicab operations was excessive because of a large percentage of dead mileage. Individual drivers and operators employed by corporate operators were unable to make a decent living because of keen competition and a war of cutting rates of fare to attract business caused congestion of the streets, endangered taxicab passengers and others making ordinary use of the streets, and created such disorder as to require police intervention."

Apart from its flat charges of intentionally con-
1262 ceived conspiracy to purchase these companies to compel them to buy CCM cabs, the government adverts to a few matters, one of which is its charge that in August, 1933 CCM prevented a so-called divorcement of Chicago Yellow from Parmelee.

That charge was based on a letter from Messrs. Keehn, Poust & Keeley, which as a matter of fact has been stricken from the evidence as incompetent. But, in the first place, that charge is really an amusing charge, since that letter was written when Mr. Markin was out of office in CCM, and Messrs. Laird, Bissel and Meade and the du Pont group were the largest stockholders and, secondly, it is a complete misunderstanding of the facts.

In 1933, Parmelee needed some money, and Parmelee owned some Chicago Yellow shares, and Parmelee had outstanding a debenture issue which was governed by a trust indenture. Under the provisions of that indenture Parmelee was prohibited from actually pledging any of the assets, including the Chicago Yellow shares, to secure a loan. Consequently, the arrangement was made under
1263 which Parmelee sold to Yellow certain shares of Chicago Yellow, coupled with a repurchase option before the end of the year. That option was exercised at the end of the year, and that transaction ceased, and that is all there is to it.

It was purely and entirely a question of temporary financing.

Another matter to which the government refers, which the defendants think is really ludicrous, although it is the basis of this whole suit, is the 1937 license reduction.
1264 In the first instance, the reduction of the number of licenses by the City of Chicago pursuant to the ordinance of December 22, 1937 was purely an economic matter which was considered by the City Council on hearings, in which union representatives of drivers were represented, and in which the City Council made a declaration of legislative finding that as a matter of public convenience and necessity only 3,000 cabs should be run at that time.

The government's charge, in order to bring that situation back into this case, is that CCM, in order to sell more cabs in the City of Chicago, coerced Checker and Yellow into reducing the number of licenses which they would have, and the court will recall that it was only Yellow and Checker that surrendered licenses. The 405 independent licenses

which were outstanding before the reduction were outstanding after the reduction, and that number has been increased subsequently by temporary permits.

Therefore, the defendants suggest that this entire charge is a fantastic creation, and is nothing more than an
1265 attempt, in some form or other, to fasten the suggestion of interstate commerce into a case in which the basic charge has been determined by the Supreme Court to have no bearing on interstate commerce.

The COURT: I am sorry to have to interrupt you. The court will have to recess this case now until 10 o'clock tomorrow morning.

Mr. LYNTON: Very well.

(Thereupon an adjournment was taken to 10 o'clock a. m. of the following day, June 4, 1948.)

1266 No. 46 C 1339

UNITED STATES OF AMERICA, PLAINTIFF,

vs.

YELLOW CAB COMPANY, *et al.*, DEFENDANTS.

Before Judge LaBuy
Friday, June 4, 1948,
10:00 o'clock a. m.

Court met pursuant to adjournment.

Present:

Mr. Hotchkiss
Mr. Williams
Mr. Lynton
Mr. Ginsberg
Mr. Fuller
Mr. Climenko

The CLERK: Case on trial.

The COURT: Proceed.

Opening Statement on Behalf of Defendants (Ctd.)

By Mr. LYNTON:

At the conclusion of yesterday's session, we had come to the 1937 ordinance, and I briefly mentioned some of the economic circumstances under which that ordinance was passed, and the defendants had suggested that the Government's argument was indeed absurd, that for CCM to
1267 sell more cabs to Yellow and Cab Sales, Yellow and Cab Sales had reduced the number of cabs which were operated by them.

The Government has conceded the validity of the 1937 ordinance, and that ordinance includes the legislative finding which has contained within its terms that, and I am quoting:

"Public convenience and necessity require that the number of taxicabs within the City of Chicago be reduced to 3,000".

And yet, at the same time, the Government attacks the license rights of Yellow and Cab Sales under that ordinance, saying that the number of licenses was reduced to 3,000, not because public convenience and necessity so required, but because, in some strange and eseteric fashion, CCM might sell more cabs to companies whose license position was reduced in proportion to other licensees under that ordinance.

Of course, and apart from the strangeness of the Government's conception in regard to that ordinance, the ordinance, as a matter of actuality, had no relation whatever to CCM or to sales of cabs, or to any manufacturer of
1268 automobiles. It was merely a solution to an economic problem facing the taxicab operating companies and all operators within Chicago.

There was a solution that was reached under discussion before the Public Vehicle License Commission; there was a solution that was reached in connection with discussions with representatives of the union.

CCM was not involved in those discussions in any way did not participate and was not consulted.

This whole matter has been determined already by the Illinois Supreme Court.

The suit which was commenced by Yellow Cab Company against the City of Chicago, and in which the validity of the ordinance was sustained by Judge Feinberg, came before the Illinois Supreme Court, and that Court affirmed the decision of Judge Feinberg.

I should like to invite to the Court's attention certain brief portions of the opinion of Mr. Justice Fulton in the Illinois Supreme Court.

Said Mr. Justice Fulton;

1269 "The ordinance of 1937 was a general ordinance of general application and merely attempted to provide a method for meeting the difficulties incident to the operation of taxicabs resulting from a period of economic depression. This ordinance was passed for the purpose of establishing a proper regulation for the

taxicab business in the City of Chicago during a critical period. The fact that appellees—"

And in that case the appellees were Yellow and Checker joined.

"The fact that appellees may be the only persons who surrendered taxicab licenses, and are therefore the only persons entitled to the preference, does not render the ordinance void, since the ordinance is of general application, and since preference in obtaining additional licenses is given only for a limited time, and is based on a valuable consideration. The City Council of the City of Chicago, in the exercise of its legislative dis-
1270 cretion could well have determined that this ordinance was a proper exercise of its police power for the regulation of the taxicab business, and regulation of traffic congestion upon its streets. It is not the province of this court to inquire as to the wisdom of passing the ordinance."

Before the Illinois State Court, in connection with this very same suit, was also posed the question concerning non-operation for a short period of time of certain taxicabs, and much the same sort of argument was made in that case as is suggested by the Government in this case.

I am not going to burden this opening with much of the quotations from the opinion of Mr. Justice Fulton in that regard, but I think that one sentence shows the extent to which that matter was considered and determined by the State Court.

Said Mr. Justice Fulton:

"The evidence shows that in 1940 and in 1941 appellees replaced their taxicabs fleets in the city with new
1271 equipment, but since that time, due to economic restrictions occasioned by world war, they have been unable to obtain new equipment occasionally used by them for taxicab purposes."

The result of that decision was to sustain the position of Yellow and Checker in all respects. It was a sustainer of the validity of the ordinance; it was a sustainer of the rights, the priority rights of Yellow and Checker under this ordinance.

In this case before us, the United States Supreme Court has already ruled that that is a local problem, and that any suggestion of restraint, which, of course we deny, is not even a matter of concern for the Federal Government.

And the Supreme Court therefore directed to be removed from this case all considerations addressed to the local conditions, or the conditions under this ordinance, if the Government suggests that thereby they were the subject of any restraint.

I should like now to mention briefly certain of the outstanding facts in relation to the sales of taxicabs, and particularly with respect to sales by CCM.

1272 In the first instance, it should be brought clearly to the attention of the Court, and the proof will show, that there are no exclusive contracts whatever between CCM and any of the companies which are involved in this suit. And indeed, there are no exclusive sales contracts between CCM and anyone.

The second significant fact is that of all the taxicab companies, and I refer to the operating companies, of all the taxicab companies which are involved in this suit, each, with the single exception of Yellow in Chicago, bought, or some of their antecedents, bought CCM cabs before 1929, so that all of those, with the single exception of Yellow in Chicago were customers of CCM before the date of the alleged conspiracy in this case.

In the instance of Yellow in Chicago, I have already indicated that the source of supply of its purpose built cabs, which was the Yellow Cab Manufacturing Company, had been sold to General Motors some years before the date of this alleged conspiracy, and that General Motors was using the plant so obtained primarily for the manufacture of trucks and buses.

CCM manufactures what is known as a purpose
1273 built cab. During the period from 1929 to the present, when we consider that as a continuous period, it was the only such manufacturer.

I do not mean to indicate by that that during the period of that nineteen years or so there never was any other company which made a purpose built cab or something which conceivably might be called a purpose built cab, but I do wish to indicate that during that period there was no manufacturer which maintained a production of purpose built cabs as a continuous matter.

A purpose built cab, I might say, is self-explanatory, and the qualities will be shown during the course of this proof.

However, I think I might for purposes of characterization, mention at least three of the predominant qualities.

First, a purpose built cab is so made, as a matter of utilization of certain of the parts, so that there are safety features for the driver and the passengers which are not available in the usual automobile.

Second, the assembly of the parts in the production
1274 of such a cab is made with a view to ease and cheapness of the course of maintenance. By that, I mean that the parts are so assembled that their accessibility is easier, so far as those things are concerned which wear most heavily during normal taxicab operation.

A third characteristic might be called conveniently driver and passenger appeal. By that I mean to indicate that there are things in these cabs which make the driver's life easier while he is operating the cab, and there are features of this cab which give a certain appeal by way of attractiveness to the public when it hires a cab.

From these characteristics, and the nature of the purpose built cab, and the use of the purpose built cab by all of the companies involved in this suit or their antecedents for long periods prior to 1929, it becomes manifest that the purchase by these companies of the CCM cabs were purchases on merit and not purchases under compulsion.

Particularly significant in that regard is the hit which I mentioned yesterday, which the Model K cab had created in the taxicab world in 1928.

Not only were these cabs purchased by the operat-
1275 ing companies as a matter of merit, as a matter of their custom in using purpose built cabs, and in the the matter of the general non-availability of any other manufacturer of such a cab but in addition to that, as has already appeared in the evidence, and will further appear, these companies, particularly Yellow of Chicago, from time to time experimented with passenger cars or other vehicles employed by the large automotive manufacturers.

1276 Particularly the court may recall that in 1935, the Board of Directors of Yellow reviewed the available cabs, the available specifications that might be made by some seven to ten of the national automotive manufacturers of that day; and it was determined, after a review of that, that the cabs of CCM which were purchased were purchased as a matter of merit.

Now, since 1929, this manufacturer, CCM, which the government has alleged is engaged in antitrust monopolization and restraint, has sold a total of 29,260 taxicabs, of which 16,996 were sold at one point or another to com-

panies which may be said, in one form or another, to be affiliated—and I am using that word loosely. 12,260 were sold to companies or individuals which had no possible affiliation or relationship.

In the beginning, more cabs were sold to nonaffiliates than to affiliates, so that in the very period when this so-called conspiracy is asserted to have begun, CCM was selling an important part of its production to the taxicab world who bought the Model K and subsequent models as a matter of merit.

1277 I might also mention that these features of the purpose-built cab, and the utilization of the purpose-built cab has more significance in large cities where the number of cabs operated are greater than in some of the smaller cities because the maintenance problems may be centralized, and economies may be achieved, and various other factors which involve a lessening of the cost of operation which result when you have more rather than few cabs with which to deal.

Now, against this total production since 1929 of 29,260 taxicabs, we have a national automotive production in this country of 54,829,016 units, so that it becomes clearly apparent that we are talking about a very insignificant portion of the automotive industry when we consider the production capacities of CCM.

It also becomes apparent that if the CCM cabs are not bought, the choice is with respect to automobiles produced by some three or four of the great automobile companies of the United States, so that the suggestion which I made before again clearly becomes apparent that the govern-

1278 ment is, in this situation, in effect championing the rights and the powers and the privileges and the expansion of General Motors, Ford and Chrysler in respect of CCM.

I turn briefly to the transfer of passengers and baggage between railroad stations in the city of Chicago by Parmelee. The government charge is that Yellow and Cab Sales have agreed and conspired not to compete with Parmelee for this transfer business of Parmelee between Chicago railroad stations.

The proof will show that there is not and never was any such agreement or conspiracy or discussion, and that it was and has been and is utterly impractical for Yellow and Cab Sales to enter that type of business competing with Parmelee.

Parmelee was originally formed on May 9, 1853, and it has since conducted that transfer business with absolute continuity. There has been no interruption whatever for nearly a century.

The relationship between Parmelee and the railroad companies has come before the United States Supreme Court twice. It came before the court in the case of Donovan vs. Pennsylvania in 199 U. S. 182, and it came before that court in our suit, and in both instances, the United States Supreme Court held and said that that relationship of Parmelee with the railroad stations, even though it might be characterized as exclusive, was a valid relationship and was not subject to invalidity either on property rights or under the Sherman Act.

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Parmelee's business, I have said, is unlike that of Yellow and Cab Sales. Parmelee operates limousines and trucks. It does not operate any public cabs. Parmelee's transportation is solely between Chicago railroad stations and is along fixed routes. Parmelee's limousines cannot, of course, be hired by any one person, and no one can travel in that limousine to a destination of his choice.

Limousine passengers must await appropriate loading of the limousines, and they can travel only between the railroad stations.

Yellow and Cab Sales, on the other hand, operate their cabs as licensees of the City of Chicago subject to its ordinances. Its cabs, by ordinance, are to carry—and I quote—"every person" to whatever destination he chooses within Chicago.

1280

The arrangements between Parmelee and the railroad associations, however, restrict transportation by Parmelee only to railroad passengers and only between railroad stations. And since the duties imposed by ordinance on Yellow and Cab Sales are to carry every person anywhere within the city of Chicago, Yellow and Cab Sales cannot, as in the case of Parmelee, be restricted by contracts with the railroads to the carriage of only railroad passengers and only between railroad stations. Nor, is Yellow or Cab Sales prepared to go into the business of Parmelee. It hasn't the personnel.

The proof will show that as a matter of practical business you cannot use a driver on a taxicab one day, when he is being paid under a commission rate, and when his fares are governed by the requirements of the ordinance, and the second day make him the driver of a limousine or truck.

Neither Yellow nor Cab Sales have the equipment. They have cabs which are utilized under city licenses, and
1281 they do not have limousines; they do not have trucks; they do not have an accounting staff; they do not have seasoned personnel; they do not have any seasoned relationship such as Parmelee has, extending for nearly a century, and there are many other factors which will be adduced into evidence.

So as a matter of practicality, neither of these companies ever has been prepared to even consider entry into that business.

There is, indeed, even another factor, and I mention it simply to indicate the extraordinary extent to which the government has gone in its speculation in order to form a basis for the conjecture that there is restraint under the Sherman Act. We have the decision determined by the United States Supreme Court, addressed to Yellow and Cab Sales in the city of Chicago, that they are not engaged in interstate business. Therefore, the problem of interstate commerce, including, for example, such things as wages and hours, and all sorts of ramifications would come into being, if, as the government suggests, these companies should change the nature of their business or should
1282 attempt in some form or other to get the equipment and personnel and attempt in some form or other to obtain the relationship of competing against Parmelee for railroad business between stations in the city of Chicago.

Parmelee, and its predecessors, as I have stated, have engaged in this inter-station transfer business since 1853. Yellow and its predecessors operated cabs since 1910, and Checker operations, whose licensed cabs is now conducted by Cab Sales, since 1919, and never, either before or after January, 1929, the date which the government asserts was the beginning of this conspiracy, did Yellow or Checker or Cab Sales ever engage, or attempt to engage in a kind of business in which Parmelee is engaged in, and on the other hand have any of these companies, Yellow, Checker or Cab Sales, before or after the date of this alleged conspiracy, ever agreed or discussed that they should or should not engage in a kind of business in which Parmelee is engaged.

And, finally, subject to the ordinances which bind them, Yellow and Cab Sales do offer their services to all
1283 railroad passengers at Chicago railroad stations, and therefore, in that respect do compete with Parmelee.

This entire case by the government, we submit, is nothing, in its essentials, other than an attempt, by some form of miraculous hindsight or conjecture, some possible theory retrospectively to evolve a conspiracy in this case, or attempt to evolve such a conspiracy, from an evolution of unexpected business conditions and uncontrolled events, to predicate some design and plan which it was impossible for any normal person even to conceive, is nothing more or less than the work of a fortune teller.

The government has surveyed the history of these companies from a very early time, even before 1929, and because the government has determined that it, in some form or other, would try to find a theory to get a result other than the result obtained in the state court concerning the 1937 ordinance, attempted in some magic way to trace a pattern of a preconceived conspiracy, and in so tracing the pattern, they omitted from consideration entirely every real relationship of stock and interest. In tracing that pat-
1284 tern, they have not even bothered to find out who, at various times, were the largest stockholders of CCM.

Fundamentally, this suit is addressed to local conditions and the 1937 ordinance, and at bottom, there is nothing more than that to this suit.

I should not like to close this opening without adverting once and finally to the question of the position of CCM in the automotive industry in the United States.

Now, I understand that the Supreme Court has said that for theoretical purposes, the legal conception only may be considered whether there has been an appreciable segment of commerce which is subject to any theoretical restraint, but as a matter of practicality, as a matter of application whether restraints have been imposed, whether restraints are reasonable or unreasonable, one must consider who are the potential competitors, the government in this conjectural speculation is endeavoring to say CCM is prevented from selling cabs, and when you measure against CCM the power and influence and the production capacities and competitive utilizations of the great automotive
1285 industries in the United States, it becomes difficult for us, at least, to conceive that there is any real business restraint.

In addition to that, the control of the cabs, of the kind of cabs, of the specifications and all matters pertaining to that is within the city of Chicago under the very terms of its ordinances.

1286 And so we end this by suggesting to the Court that as a matter of control, as a matter of local operation, as a matter of the extremely small part of the CCM in relation to the automotive industry, this theory of the Government is nothing more than something of which they dreamed in an ivory tower in order to invoke Federal jurisdiction in a matter which is solely local.

WHEREUPON THE DEFENDANTS, TO MAINTAIN THE ISSUES ON THEIR BEHALF, INTRODUCED THE FOLLOWING EVIDENCE:

Offer in Evidence.

Mr. LYNTON: At this point, if the Court please, I should like to offer in evidence the statistics as shown by the Automotive Industries American Statistics Association of the entire automotive production in the United States.

Is there any objection to that?

You will find that these figures are compiled from the official figures of the various companies, and their notation of the source is indicated.

Mr. HOTCHKISS: In view of the decision of the Su-
1287 preme Court, I would be constrained to object to this because of the immateriality of the volume of business done by other companies. The Supreme Court has held that the volume of business done by CCM is a substantial volume of business, and that it is not necessary to take into consideration the relationship—

The COURT: Would you read that passage?

Mr. LYNTON: From the opinion?

The COURT: Yes.

Mr. LYNTON: There are two sentences which refer to this:

> "If that theory (referring to the theory of calculated design) is borne out in this case by the evidence, coupled with proof of an undue restraint of interstate trade, a plain violation of the Act has occurred."

The other sentence is:

> "The test of illegality under the Act is the presence or absence of an unreasonable restraint on interstate commerce."

Do I take it that the Government's objection is addressed purely to materiality?

Mr. HOTCHKISS: I will read another portion of the opinion.

1288 Mr. LYNTON: Would you answer that, please?

Mr. HOTCHKISS: I will read another portion from the Supreme Court decision:

"But the amount of trade and commerce thus affected by the conspiracy is immaterial in determining whether a violation of the Sherman Act has been charged in the complaint. Section 1 of the Act outlawed unreasonable restraint on interstate commerce regardless of the amount of commerce affected."

Then citing the Socony Vacuum case and the Apex Hosiery case.

"And Section 2 of the Act makes it unlawful to conspire to monopolize 'any part' of interstate commerce, without specifying how large a part must be affected. Hence, it is enough if some appreciable part of interstate commerce is the subject of a monopoly, a restraint, or a conspiracy. The complaint in this case deals with interstate purchases of replacements of some five thousand licensed taxicabs in four cities. This is an appreciable amount of commerce under any standard."

1289 Therefore, I think that this is entirely irrelevant and immaterial.

Mr. LYNTON: May I make my position very clear, if your Honor please?

We have in the United States a total national production of automobiles. Two questions arise:

The first, whether, if there was any restraint addressed to a sufficient number of the entire production as to be appreciable, whether that might be a violation of the Sherman Act. I am not concerned with that question at this time.

The second question is: In determining what is restraint, and whether the restraint is reasonable or unreasonable, so as to measure the competition of CCM in this case against the others, you must necessarily consider what is the production, who are the other producers; and, therefore, we seek to introduce this, not in an attempt to change the suggestion of the Supreme Court and if there is in fact restraint that restraint may be a violation of the Sherman Act, but it is addressed to the question of whether there is such a restraint and whether that restraint is reasonable or unreasonable.

1290 Now, I understand that the Government's only objection to this is on the basis of materiality, and I submit, accordingly, that this is completely material.

The COURT: I think it should be received in evidence.

(Said document so offered and received in evidence, was marked Defendants' Exhibit 2.)

Mr. LYNTON: If your Honor please, I shall not burden the record with a reading of this. I am handing the exhibit to your Honor, and I mention merely two figures, so as to indicate the nature of the automotive production.

In 1929 it was 5,358,420, and between that date and 1947 it has varied from the top of 5,358,420, shown in 1929, and a low of 699,828 in 1943, to a final production in 1947 of 4,797,587 units.

Mr. LYNTON: Mr. Sokoll.

1291 MICHAEL M. SOKOLL, called as a witness on the part of the defendants, having been heretofore duly sworn herein, testified as follows:

The COURT: You have been previously sworn?

The WITNESS: Yes, your Honor.

Direct Examination.

By Mr. LYNTON:

Q. Mr. Sokoll, although we have an antitrust here, we have competition with the trolley cars. Will you please keep your voice up?

When did you first become an officer of Checker Taxi Company? A. 1920.

Q. What office did you hold? A. Secretary.

Q. How long did you remain secretary? A. Until June, 1921.

Q. Did you then become an officer in another capacity? A. I did.

Q. What? A. President.

Q. How long did you remain as president?

1292 A. Until January, 1922.

Q. And thereafter did you change your office in that company? A. I was a director of that company.

Q. And when did you cease to be a director? A. I was reelected president in June, 1922.

Q. And when did that office of presidency cease so far as you were concerned? A. In April, 1923.

Q. And did you also cease to be a director on that same date? A. No, I did not.

Q. When did you cease to be a director? A. I am sorry. I did cease to be a director on that date.

The COURT: You will have to talk louder; I cannot hear you.

The WITNESS: I did cease to be a director in April, 1923.

By Mr. LANTON:

Q. When was the Checker Taxi Company formed? A. In February, 1919.

Q. And who were the persons who organized that
1293 company? A. There were about seven individuals, who were owners and drivers of taxicabs. I believe three of the individuals appeared on the articles of incorporation.

Q. In 1919, what company operated the largest number of taxicabs in the City of Chicago? A. Yellow Cab Company.

Q. And were those Yellow cabs uniform in appearance? A. They were.

Q. And were they all manufactured by Yellow Cab Manufacturing Company? A. Yes.

Q. Were the cabs which were first used by Checker in 1919 and 1920 cabs of assorted makes? A. Yes, they were.

Q. Did a time come in connection with Checker when the individuals who were members of Checker determined to obtain a standard cab? A. In 1921—

Q. Just answer yes or no. A. Yes.

Q. Was the standard cab that was obtained first a
1294 cab manufactured by CCM? A. No.

Q. What was the first cab of a standard quality that was obtained by the members of the Checker? A. A cab manufactured by Commonwealth Motors Company.

Q. And were some of the bodies that were made for Commonwealth produced by a company called Markin Auto Body Works? A. Yes.

Q. Did Commonwealth cease manufacturing about 1922? A. Yes.

Q. In 1922 did Checker purchase its standard cabs from CCM? A. Yes.

Q. And during the period between 1922 and 1923, while you were an officer of Checker, were CCM cabs made by CCM and sold to drivers of the Checker group? A. Yes.

Q. The name "Checker" was in the corporate title of Checker Taxicab Company before it was in the corporate title of CCM, was it not? A. Yes.

Q. And was there a relationship between the use
1295 of the name "Checker" between those two uses?

Is that question difficult to understand? A. No. None that I know of.

Q. Did the use of the term "Checker" in Checker Taxi suggest the use of the name "Checker" in CCM—Checker Cab Manufacturing Company? A. I am sorry; I don't understand that question.

Q. You have testified that the name Checker first appeared in Checker Taxi Company, and later appeared in Checker Cab Manufacturing Company, have you not? A. I did.

Q. And you have also testified that the standard cab ordered by Checker was in 1922 and 1923 from CCM, have you not? A. That is right.

Q. Who were the stockholders of Checker during the period 1919 to 1923? A. Various taxicab drivers.

Q. Did those drivers purchase their own cabs, whether from CCM, or in the early years from someone else? A. Yes.

1296 Q. Did Checker during that time perform services for their member stockholders? A. Checker performed services for the stockholders.

Q. What services were performed? A. They maintained the telephone system, cab stands, garages for the parking of taxicabs; they washed the cabs, obtained insurance covering the operation of the taxicabs, and furnished legal services in relation to the operation of the cabs.

Q. For those services, did Checker obtain service payments from the drivers? A. Yes.

Q. You have testified that you ceased to be an officer of Checker sometime during 1923, have you not? A. I did.

Q. When did you next become an officer of Checker? A. In 1924 I was elected a director—January, 1924.

Q. And when did you cease being a director? A. January, 1925.

1297 Q. Now, referring to the position of officer as distinguished from director, you were last an officer of Checker in 1923, were you not? A. That is right.

Q. When next did you become an officer of Checker? A. In May, 1931.

Q. Between 1923 and 1931, in what business or businesses did you engage? A. In 1923, the latter part of 1923 and 1924—

The Court: Talk louder. I can't hear you.

The Witness: In the latter part of 1923, in 1924, and in 1925, I was engaged in the business of selling taxicabs.

By Mr. Lynton:

Q. And thereafter? A. In 1926 I went into the insurance

business, and sold insurance to taxicabs, or to taxicab operators.

Q. And did you continue that insurance business at least until 1931 when you next became an officer of the Checker? A. I continued the insurance business until then, until shortly after that time.

Q. During the period 1923 to 1931, were your business activities devoted to the general taxicab operation in
1298 Chicago with respect to the sales of cabs and insurance of cabs? A. It was.

Q. And did you during that time maintain a familiarity with the taxicab conditions of that period in Chicago? A. I was in constant contact with individuals engaged in the taxicab business.

Q. Before 1931 you were employed by Chicago Cab Company, were you not? A. Yes.

Q. What was the date of your employment? A. June, 1930.

Q. Did you solicit that employment? A. I did not.

Q. Who suggested that employment to you? A. Mr. Ernest Miller.

Q. Did you know Mr. Miller at that time? A. I knew of him.

Q. What did you know about Mr. Miller at that time? A. Well, I knew that he was president of the Parmelee Transportation Company; that he had been a very successful taxicab operator in Newark, New Jersey, where he
1299 operated the Yellow Taxi Company; and a successful operator in taxicabs in New York City. He was known to me as the outstanding taxicab operator in the United States at that time.

Q. Did you know of that reputation of Mr. Miller before 1929? A. I knew it for a period of years preceding that date.

Q. Was Chicago Cab Company, when you were employed for it by Mr. Miller, in June, 1930, a company in any way connected with Parmelee? A. Yes.

Q. Do you know who was the owner of the stock of the Chicago Cab at that time? A. I believe it was the General Transportation Company.

Q. Do you know who was the owner of the stock of General Transportation Company at that time? A. I believe it was Parmelee.

Q. In June, 1930, was the stock of De Luxe Cab Company also owned by General Transportation Company? A. I think so.

Q. Shortly after your employment in June, 1930, were there any transfers of any of the drivers or
1300 equipment of the De Luxe to Chicago Cab? A. There was no transfer of equipment, but the drivers of De Luxe Cab joined as members of Chicago Cab Company.

Q. Was the arrangement with respect to the drivers of Chicago Cab similar to that of the Checker during the period of the early 1920's? A. Yes, it was.

Q. That is to say, the drivers procured their cabs, and paid service charges to Chicago Cab, is that not right? A. Yes.

Q. And has that also been the situation with respect to De Luxe? A. I believe it was.

1301 Q. How long did the operations of Chicago Cab last? A. About two years.

Q. You were with Chicago Cab immediately after its incorporation, were you not? A. Yes.

Q. Did Chicago Cab ever buy any cabs from CCM during the period from its incorporation until the time when it ceased operations? A. No.

Q. You have testified that about May, 1931 you became president of Checker, is that correct? A. That is correct.

Q. Did you solicit that job? A. No, I did not.

Q. Who suggested to you that you become president of Checker? A. Mr. Paul L'Amoreaux.

Q. Do you know whether at that time Mr. L'Amoreaux had any interest in Cab Sales & Parts Corporation? A. Yes.

Q. Did he? A. He did.

Q. And have you since May, 1931 remained presi-
1302 dent and general manager of Checker? A. Yes.

Q. Mr. L'Amoreaux died, did he not? A. He died in 1933.

Q. And sometime after his death did you also become general manager of Cab Sales? A. I did.

Q. And, as a matter of continuity, didn't Cab Sales in 1938 change the state of its incorporation? Did it? A. Yes, it changed from Delaware to Illinois.

Q. In May, 1931 and for a period immediately following, the cabs operated by the drivers of Checker were purchased directly by them, were they not? A. That is right.

Q. Was Checker contingently liable to pay the purchase price? A. On some of the cabs.

Q. On those cabs which were purchased from CCM? A. That is right.

Q. And with respect to those cabs which were purchased from CCM, was Cab Sales also contingently liable
1303 to pay the purchase price to CCM? A. Yes, it was.

Q. The drivers paid their service charges directly to Checker, did they not? A. Yes.

Q. During the period 1931 to 1935, did the drivers always pay their installments on the cabs purchased from CCM? A. No, they did not. Some of the drivers defaulted.

Q. In the case of the drivers who defaulted, were any of the cabs abandoned? A. In some instances the cabs were abandoned.

Q. In other instances, was there any repossession of those cabs? A. In most instances the Cab Sales & Parts Company went through the legal phase of repossession.

Q. And practically did repossess them, is that correct? A. Yes, they did.

Q. And tha is the same Cab Sales which had become contingently liable for the payment of unpaid installments, is that not right? A. That is right.

1304 Q. Now, during the period of 1931 to 1935, did the drivers always pay their service charges to Checker? A. Some of them defaulted; quite a considerable number of them defaulted in the payment of service charges to Checker Taxi Company.

Q. I show you a statement and ask you whether that statement was prepared under your supervision? A. Yes.

Q. Is this a statement of the arrearages by the drivers on their service charges during the period 1931 to 1935, together with that portion of the arrearages written off to bad debts? A. It is.

Q. Is it correct? A. It is correct.

Mr. Lynton: I offer it into evidence.

Mr. Hotchkiss: No objection.

The Court: Received.

(Said document, so offered and received in evidence, was marked Defendants' Exhibit 3.)

Mr. Lynton: May I, for the record, read this statement:

1305 In 1931 the arrearages on drivers' service charges were $86,957.46.

In 1932, $12,000 of that $86,957.46 was written off to bad debts.

In 1932, additional arrearages accumulated to the extent of $220,824.45.

Of the previous arrearages, in 1933, $128,214.92 was written off to bad debts.

In the year 1933, an additional $178,525.30 accumulated as arrearages by drivers.

In the year 1934, of the previous arrearages, $113,229.50 was written off to bad debts.

In the year 1934 an additional $48,257.51 accumulated as arrearages by drivers, and in 1935 of the previous arrearages, $43,942.23 was written off to bad debts.

By Mr. LYNTON:

Q. Mr. Sokoll, did you ever hear of the Shapiro fleet? A. Yes.

Q. Who was Mr. Shapiro? A. Mike Shapiro was employed by me as a garage superintendent.

1306 Q. For what company? A. For Checker Taxi Company.

Q. In what year was the Shapiro fleet operated? A. Well, it started in August, 1933.

Q. How did that operation come about? A. In June, 1933 a large number of the Checker drivers under contract with Checker Taxi Company violated their contract, and refused to pay service charges. This resulted in a litigation in this court under the title Checker Taxi Company vs. O. Wergin, *et al.*

During the period from June to August a number of the cabs, a number of Model K and Model M Checker cabs of the type manufactured by Checker Cab Manufacturing Company had been abandoned and repossessed because of this situation, and in August, because of our obligation on the notes—

Mr. HOTCHKISS: What year was that? Excuse me.

The WITNESS: In August, 1933, because of our obligation as guarantor of the chattel mortgage notes, I decided it was wise to operate those cabs in order to get the revenue out of them to pay the notes, and there were some seven or

1307 eight cabs that we started out at that time, after reconditioning them, and we called it the Mike Shapiro fleet.

Q. That was simply a colloquialism, was it not, that name? A. Yes. At that time there were a number of fleets by other men, and they were referred to as such, and we called that the Michael Shapiro fleet.

Mr. LYNTON: I offer in evidence a certified copy of the judgment in the case referred to by this witness, entitled Checker Taxi Company vs. O. Wergin, *et al.*, in this court.

Any objection?

Mr. Hotchkiss: No objection.

The Court: It may be received.

(Said document, so offered and received in evidence, was marked Defendants' Exhibit 4.)

Mr. Lynton: I shall not read this document, but I invite the attention of the court that the first three pages are taken up with the names of the individual defendants, and that this judgment enjoined those individuals from violating their relations with Checker in respect of their
1308 service payments and their operation of the cabs.

Q. Were the cabs operated in this Shapiro fleet all used cabs? A. Yes.

Q. During the operation of this Shapiro fleet, were the cabs used in the Shapiro fleet capable of paying the service charges to Checker? A. They were.

Q. And did they in fact pay them? A. They did.

Q. And during that same period did the individual drivers always pay them? A. No.

Q. In 1935 Cab Sales bought 500 new cabs from CCM, did it not? A. Yes.

Q. That was a direct purchase by Cab Sales from CCM, was it not? A. That is right.

Q. And that was the first such direct purchase was it not? A. That is right.

Q. Do you recall whether anyone within Checker suggested to you that Cab Sales so purchase cabs
1309 from CCM? A. Mike Shapiro did.

Q. And was it as a result of his suggestion that those—

Mr. Hotchkiss: Objected to, calling for a conclusion.

Mr. Lynton: Very well. I withdraw the form of the question.

Q. The Mike Shapiro to whom you have just referred is the same Mike Shapiro who operated the so-called Shapiro fleet, is that not right? A. That is right.

Q. Did he remain in your employment between 1933 and 1935? A. He is still in my employment.

Q. But he did remain during that period, did he not? A. Yes.

Q. Do you remember when you had a discussion with Mr. Shapiro concerning the purchase of new cabs by Cab Sales from CCM? A. Yes.

Q. Who initiated that discussion? A. Mr. Shapiro.

1310 Q. What did he say? A. He said that he believed that the operation of the Shapiro fleet had

been successful in so far as Cab Sales and Checker Taxi Company were concerned, and he thought that in his opinion we ought to consider continuing that operation by the purchase of new cabs. He said that he understood that our competitor, Yellow Cab Company, was about to purchase some new cabs from the Checker Cab Manufacturing Company, and that he could not continue to operate these old cabs in competition with the new ones.

My reply to that was—

Q. I did not ask you that; but now I will ask it. All right. What did you say? A. I said that I agreed with him that the Shapiro fleet operation was a successful one, and a very successful one as far as Cab Sales and Checker Taxi and myself were concerned.

Q. Did Mr. Shapiro have any stock interest in Checker at that time? A. None.

Q. Has he ever? A. Yes. I believe he at one time
1311 was a driver-owner-stockholder.

Q. And about when did he cease to have a stock interest as a driver-owner? A. Oh, I would say about 1922 or 1923.

Q. And did Mr. Shapiro have any stock interest in Cab Sales? A. No.

Q. Was he paid a salary by Cab Sales? A. Yes.

Q. In 1935, about how many cabs were operated under the city licenses within the Checker structure, and I include in that question both cabs operated by Cab Sales and cabs operated by others. A. 1,500.

Q. Of those 1,500, how many in that year were operated by Cab Sales? A. 500.

Q. Were the other 1,000 operated by the individual drivers in much the same fashion as before? A. With the exception—yes, they were; with the exception of some small fleets, where the man had two cabs or five or ten. I think the biggest fleet was one containing thirty cabs.

1312 Q. Between 1935 and 1941, these individual drivers gradually fell out of driver operation, did they not? A. Yes.

Q. And as they fell out, Cab Sales began to operate more cabs within its own fleet, did it not? A. That is right.

Q. Did you ever suggest to any individual driver that he cease operating a cab within the Checker organization? A. No, I did not.

Q. Did anybody else to your knowledge, connected with CCM, Cab Sales or Checker, ever make any such suggestion to any such driver? A. No, not that I know of.

Q. You testified that you returned to Checker about May, 1931, did you not? A. I did.

Q. Shortly after you returned to Checker, did you learn of the settlement of a lawsuit between CCM and Checker? A. Yes.

Q. Did you learn that that settlement was em-
1313 bodied in an agreement dated February 5, 1930? A. Yes.

Q. Did you know of the persons in Checker who prior to 1930 had been the officers of Checker? A. Yes.

Q. In 1930, who was the president of Checker? A. Robert E. McLaughlin.

Q. And was he likewise the president about May, 1931? A. Yes, he was.

Q. Do you know whether he had a brother named Eugene McLaughlin? A. Yes.

Q. What happened to Eugene McLaughlin? A. In 1930—

Mr. Williams: Object on the ground that it is immaterial to any issue in the case.

Mr. Lynton: I think it is very material.

The Court: He may answer.

By the Witness:

A. Eugene McLaughlin's body was found, I believe, in the Drainage Canal, trussed up with wire, and shot in numerous parts of his body.

By Mr. Lynton:

Q. Was Eugene McLaughlin a person of some
1314 notoriety prior to his death? A. Yes.

Q. You have testified that in 1935 Cab Sales bought 500 cabs, which were new, from CCM, did you not? A. That is right.

Q. And during the years 1940 and 1941, did Cab Sales buy any additional cabs from CCM? A. Yes, in the years 1940 and 1941 we bought an additional 1,000 cabs.

Q. Between 1935 and 1940 did Cab Sales buy any of its cabs from CCM? A. You mean after the purchase of the first 500?

Q. That is right, between the purchase of the first 500 in 1935 and prior to the second purchase in 1940? A. I believe not.

Q. During the period between 1935 and 1940, were the cabs within the Checker group which were not operated by Cab Sales an assortment of cabs of various makes? A. Yes, they were.

Q. And included within those makes were some
1315 CCM cabs? A. There were.

Q. Between 1941 and 1946 did Cab Sales buy any new cabs from CCM? I am referring, again, to the time after you completed your purchase of 1,000 cabs, which were purchased during the years 1940 and 1941. A. Well, some of the 1,000 were delivered in 1942.

Q. Yes, but aside from the cabs which were purchased during 1940 and 1941, and beginning with the end of that purchase, did Cab Sales purchase any new cabs from CCM before 1946? A. No.

Q. Beginning in 1946, Cab Sales did purchase some additional cars for use as taxis, did it not? A. Yes.

Q. From what companies did Cab Sales buy those cars? A. Ford Motor Company, Chrysler Motor Company, Dodge Motor Company, Chevrolet Motor Company, Mercury, Plymouth.

Q. Since 1946, has Cab Sales bought any new cabs from CCM? A. No.

1316 Q. Of what make of cars does the present fleet consist which Cab Sales operates in Chicago? A. Ford, Mercury, Plymouth and Dodge.

Q. Did you, after the cessation of hostilities of World War II, endeavor to obtain cars from any sources? A. Yes, I did.

Q. And did you communicate with any automobile dealers in that connection? A. I did.

Q. Can you estimate the number of dealers with whom you communicated during that period, roughly? A. I would say at least fifty, which would include almost every dealer in Chicago.

Q. And were you able to obtain cars from all these dealers? A. No.

Q. Were you able to obtain cars from some of these dealers? A. I was.

Q. And did you obtain cars from such dealers as would give you cars? A. Yes.

Q. You recall that in March, 1937 there was a
1317 taxicab drivers' strike, do you not? A. Yes, sir.

Q. And there was a settlement of that strike negotiated during that year, was there not? A. There was.

Q. Did you participate in those negotiations? A. I did.

Q. On behalf of Cab Sales? A. Cab Sales and Checker.

Q. Did your discussion include conversations with representatives of a union? A. Yes.

Q. What union? A. Local 777, Taxicab Drivers Union of the International Brotherhood of Teamsters.

Q. And did your discussions also include conference before the Public Vehicle Commission of the City of Chicago? A. Yes.

Q. Do you recall what division of that commission was the agency in those discussions? A. Yes, I do.

Q. What was it? A. Public Vehicle License Commission.

1318 Q. Was there a division within that? A. No, just one commission.

Q. And did your discussions also include conversation with representatives of Yellow? A. Yes.

Q. Was Mr. Benjamin Samuels the Yellow representative? A. No.

Q. Who was? A. Mr. Levin Rank.

1319 Q. Who was Mr. Levin Rank at that time? A. I believe he was president of Parmelee Transportation Company.

Q. And did you know at that time what was the relationship between Parmelee and Yellow? A. Yes, I believe I did.

Q. What was that relationship with respect to operations? A. I understood that Parmelee Transportation held an advisory capacity in connection with Yellow Cab.

Q. Now, after the discussions concerning the actual settlement of the strike, was there additional discussions concerning the reduction of the number of licenses in Chicago? A. There were numerous discussions before the Committee on Local Transportation of the City Council of Chicago.

Q. And did you participate in those discussions on behalf of Checker and Cab Sales? A. I did.

Q. And at those discussions, who participated on behalf of Yellow? A. Mr. Benjamin Samuels.

1320 Q. And during those discussions, did members of the union also participate? A. Yes, they did.

Q. Were they open hearings? A. Oh, yes.

Q. You recall entering into an agreement dated January 3, 1938, among Yellow, Checker and Cab Sales, do you not? A. Yes, I do.

Q. Did you negotiate with respect to that agreement on behalf of Checker? A. I did.

Q. And Cab Sales? A. I did.

Q. Who negotiated on behalf of Yellow with respect to that agreement? A. Mr. Rank.

Q. Did Mr. Samuels? A. I do not recall. I think Mr. Samuels did appear on one or two occasions, but practically all of the negotiations were between Mr. Rank and myself.

Q. And were those negotiations directed to the
1321 consideration to be paid by Yellow to Checker? A. Yes.

Q. You knew in 1937, did you not, that Cab Sales was indebted on certain collateral trust notes issued by the company? A. Yes, I did.

Q. Do you know the outstanding unpaid amount of those notes in 1937? A. In the latter part of 1937, about the time that I was discussing these matters with Mr. Rank, there was approximately $550,000 outstanding.

Q. And at the time of the January 3, 1938, agreement, was the amount $530,000? A. Yes, it was.

Q. Do you recall that the January 3, 1938, agreement permitted payments by Yellow to Checker either in cash or in the form of some of these Cab Sales notes? A. Yes, I do.

Q. Do you recall what was the aggregate amount to be paid by Yellow under the January 3, 1938, agreement? A. There was $320,000.

Q. In fact, did Yellow make the payment of
1322 $320,000 in cash or in notes of Cab Sales? A. In cash.

Q. All in cash? A. All in cash.

Q. During these several discussions and conversations with the union, with Yellow, and before the Public Vehicle License Commission, was there any mention made of the sales of cabs by CCM to Yellow or Checker? A. No.

Q. Did you at any time, in connection with your negotiations concerning the strike, or the reduction of the number of licenses, discuss with anybody the number of cabs that might be bought from CCM? A. No.

Q. Did you discuss with anybody anything concerning the topic of sales of cabs in connection with the strike and the reduction negotiations? A. No discussion of any kind whatsoever took place with reference to the purchase of cabs or the sale of cabs during any of those negotiations.

Q. In connection with those negotiations, did you even consider the question of the purchase of cabs by Cab
1323 Sales from CCM? A. No, I had too many other things that were worthy of consideration.

Q. There has been some testimony during the course of this case concerning cabs which were not in operation as of a specified date, January 15, 1946.

Were the cabs which were not in operation on that date temporarily retired because of repair and mechanical difficulties? A. Yes, in fact all—

Q. Now, your answer is, "Yes."? A. Yes.

Q. Were substantially all of those temporarily retired cabs returned to service shortly after January 15, 1946?

Mr. Williams: That is objected to. We have let a lot of leading questions go, and I suggest—

Mr. Lynton: I will alter the form of the question. I am trying to make speed, that is all.

Mr. Williams: That is why we have an objection.

Mr. Lynton: I understand.

Q. Were any cabs which were not in actual operation on the date of January 15, 1946, returned to service by
1324 Cab Sales after that date? A. All but four were returned to service within thirty days from that date.

Q. Were there any difficulties during that period in procuring replacements for maintenance and parts and service? A. There was much difficulty.

Q. What were the difficulties? A. During the period of the entire war, we were unable to get some parts necessary to maintain the operation of these cabs at all. Other parts we managed to fabricate in our own shops in a crude sort of way, such as balance wheels. We conceived the idea of using wood seasoned in oil instead of metal.

Q. I would like you to confine your answer, if you will, to the difficulties besetting you rather than what you did. A. Well, in 1942, I believe it was, in August, we were called in before the Director of the Office of Price Administration and informed that we could not purchase tires in sufficient quantities to run our cabs the number of miles we were then operating. Those miles had increased by almost a
1325 hundred percent since the beginning of the war, and the Director of OPA told us unless we reduced our mileage to the average for 1941, he would discontinue all our certificates for the purchase of tires.

Q. Did you have any other discussion with any other Government agency during that period? A. Yes.

Q. Which? A. Office of Transportation restricted our mileage.

Q. Just name them first. Which? A. The Office of Defense Transportation and War Manpower Commission.

Q. What were the topics you discussed?

Mr. Hotchkiss: Where?

Mr. Lynton: Would you like me to take them separately?

Mr. Hotchkiss: Yes.

By Mr. LYNTON: These two Agencies.

Mr. HOTCHKISS: Well, which one?

By Mr. LYNTON:

Q. What was the topic of discussion as to each of those Agencies, naming the Agency? A. OPA restricted
1326 our right to purchase automobiles and tires. ODT restricted our mileage to the 1941 level and requested that we institute a procedure of group riding.

The War Manpower Commission informed us that we were a non-essential industry, and as such were not entitled to any man power.

For a period of time we were not permitted to hire any mechanics whatsoever. Finally, after about twelve months of appearances before the War Manpower Commission, we were informed that the War Relocation Service would permit us to hire some Japanese internees, which we did.

The result of all this was that our cabs were deteriorating. Some of them we could not repair because of lack of mechanics and parts.

Q. Mr. Sokoll, the cab which Cab Sales had purchased from CCM and operated in the Checker structure, was a purpose built cab, was it not? A. Yes, it was.

Q. And have the cabs so purchased by Cab Sales always been purpose built cabs, so purchased by Cab Sales from CCM? A. Yes, they were.

1327 Q. What is a purpose built cab? A. Well, a purpose built cab is a cab built to the specifications of the taxicab operator and his needs.

Our request for the engineering specifications of a purpose built cab include four principal categories.

One and foremost is safety.

Two is low cost of maintenance.

Three is appearance and appeal to driver and passenger, and

Four is continuity of operation.

Q. With respect to safety, will you describe very briefly some of the safety features which appear in a purpose built cab which are not available in the usual pleasure car? A. Well, the conformation of the cab is of such a nature there are no protruding objects that might injure persons or pedestrians.

The brakes are of sufficient area—the braking surfaces are of sufficient area and of highly mechanical perfection so we get the best possible brake.

The doors are equipped with finger guards so that
1328 passengers when seated, and getting their hands between the door jambs, are protected against smashed fingers.

We have a crash bed in the rear of the front compartment so that if the passenger should be thrown forward by reason of a short stop, he is protected against injury, and the interior of the cab is lined with plastic panels rounded out carefully so that persons getting up out of the seat and coming in contact with the auxiliary seats, are not injured.

The doors are made wider for easier accessibility, and so on.

Q. In connection with the low cost maintenance, will you describe very briefly some of the characteristics which result in low cost maintenance? A. Well, the motor mounts are so constructed that the motor is easily removed and replaced for rebuilding purposes.

The clutch assemblies are so arranged so that a minimum of time is required to remove and replace.

That is true also of the transmission and differen-
1329 tial, and all of the working parts of the automobile are likewise constructed, or enginerred in such a manner that they are easily removed and replaced; time, of course, being the essence with relation to labor cost.

Q. Are some of the parts of that particular automobile subject to heavy usage in taxicab operation? A. Yes.

Q. Name just a few. A. The clutch, and the clutch release bar; the transmission and universal, driveshafts are subject to extraordinary wear and tear due to the operation of the cabs at low speeds in heavy traffic, requiring continuous shifting.

Q. Is the placement of these parts characteristic in the low maintenance cost you have described? A. It is one of the outstanding features of low maintenance cost, and incidentally, all of these features are embodied in my expression, continuity of operation. Because of the heavy duty parts used in clutch, trasmission, driveshaft and so on, we have less failures, which means that the cab is kept on the street a greater length of time. The driver is
1330 not inconvenienced by reason of loss of time due to the car being laid up for repairs.

Q. By referring to the continuity of operation, I think you have now briefly described three of the four general characteristics you have mentioned, and the last one is driver and passenger appeal.

What do you mean by that? A. Well, in the case of the driver, we had in mind that he spends about ten hours per day in operating his cab in closely congested areas, which taxes his strength.

Of course, in engineering a cab, we have that in mind. We build a seat for him that is specially constructed so that he can adjust the seat, in addition to the comfort embodied in the seat, which also has a feature which gives him something like twelve—I think it is sixteen adjustments in position. The front end of the seat can be raised, or the rear end of the seat can be raised, or the whole seat assembly can be moved forward or back in order to meet the requirements of his physique.

Q. Mr. Sokoll, has it been your opinion that
1331 the purpose built cabs best serve the needs of Cab Sales in its operation in the City of Chicago? A. Yes.

I have not finished.

1332 Q. You have not finished your previous answer? A. I have not finished my explanation of the last question.

Q. Will you finish? A. In the case of the passenger, we built a seat in a manner which we believe is most comfortable so that the knees of the passenger fit just over the edge of the seat, and the seat itself is raised in such a position so that the passenger is not inconvenienced by reason of frequent stops in traffic. In other words, we try to get the conformation of that seat so that the passenger rests comfortably at all times and under all conditions. The lazy back is arranged with unusual construction so that the passenger has more comfort, and the plastic panels which offer safety also offer added convenience of being easy to clean, therefore the passenger gets comfort from that.

Q. What has been your opinion concerning the suitability of the purpose-built cabs to the needs of Cab Sales in its operations in the city of Chicago? A. I believe in a
1333 city the size of Chicago it is imperative that a purpose-built cab be used to give proper service.

Q. Cab Sales operates cabs under the ordinances of the City of Chicago, does it not? A. It does.

Q. And Cab Sales, or Checker never operated any motor vehicles other than taxicabs under the ordinances of the City of Chicago, and I limit this question to the enactment of the first ordinance? A. No, they have not.

Q. Has Checker or Cab Sales ever engaged in the business of transferring railroad passengers or their luggage

between railroad stations in Chicago pursuant to any arrangement with the railroads or railroad associations? A. No, we have not.

Q. Has Checker or Cab Sales ever attempted to engage in that business? A. No.

The Court: Keep your voice up, please.

The Witness: No.

By Mr. Lynton:

Q. Has Checker or Cab Sales ever agreed not to
1334 engage in that business?

Mr. Williams: That is objected to as calling for a conclusion. That is a conclusion to be decided by the court in the face of the evidence.

Mr. Lynton: I will withdraw the question.

Q. Has Checker or Cab Sales ever discussed the topic of engaging or not engaging in that transfer business? A. No, they have not.

The Court: I cannot hear you.

The Witness: No.

By Mr. Lynton:

Q. As a matter of your practical experience in taxicab operations, would it be your opinion that you can use a driver to drive a taxicab on one day and then use him to drive a limousine between railroad stations in Chicago on another day?

Mr. Williams: That is objected to as calling for a conclusion of the witness. Let us have the facts; let the court draw the conclusions.

The Court: By reason of his experience, and the details he has related, I think he is competent to have an opinion. He may state it.

By the Witness:

1335 A. I do not believe it would be good business practice.

By Mr. Lynton:

Q. In your opinion, would a driver serve efficiently on such a shift from a taxicab on one day—

Mr. Williams: That is objected to as a leading question. Let us ask him what the advantages or disadvantages are.

The Court: Restate the question.

Mr. Lynton: Read the question so far as I have gone.

(Last question read by reporter.)

By Mr. LYNTON:

Q. —and driving a limousine or truck on the second day or vice versa?

The COURT: He may answer.

By the WITNESS:

A. No, he could not. It would take an entirely different type of personality for each of those jobs.

By Mr. LYNTON:

Q. Has Cab Sales or Checker any limousines? A. No.

1336 Q. Has it any trucks which might be used to convey trunks or baggage from one railroad station in Chicago to another? A. No, they have not.

The COURT: We will recess now.

(Thereupon a recess was taken to 2 o'clock p. m. of the same day, June 4, 1948.)

1337 No. 46 C 1339

UNITED STATES OF AMERICA, PLAINTIFF,

vs.

YELLOW CAB COMPANY, *et al.*, DEFENDANTS.

Before Judge LaBuy

Friday, June 4, 1948, 2 o'clock p. m.

Court met pursuant to recess.

Present:

Mr. Hotchkiss
Mr. Williams
Mr. Lynton
Mr. Ginsberg
Mr. Fuller
Mr. Climenko

MICHAEL M. SOKOLL, a witness on the part of the defendants, having been heretofore duly sworn herein, resumed the stand and testified further as follows:

Direct Examination (Continued).

By Mr. LYNTON:

Q. Mr. Sokoll, are you presently the president of the Checker and the president of Cab Sales? A. Yes.

Q. And are you general manager at present of
1338 either of those companies? A. Both companies.

Q. Do you in those capacities supervise the general operations of those companies? A. I do.

Q. Mr. Sokoll, have you ever been in the business of transferring passengers or baggage from the railroad stations in Chicago pursuant to arrangements with railroads or railroad associations? A. No.

Q. Have you any knowledge of the details of that type of business? A. None whatever.

Q. Does Cab Sales presently have a large accounting staff? A. No.

Q. Do you have any knowledge as to the accounting problems that would arise in the business which I may characterize as the transferring of passengers and baggage between Chicago railroad stations? A. I have not.

Q. Is there anyone employed by Checker or Cab
1339 Sales who, to your knowledge, has had any such experience? A. Not to my knowledge.

Mr. LYNTON: If the Court please, may I request that judicial notice be taken of the following provisions of the following legislative enactments:

Chicago Code of 1911, Chapter 59, Article II, entitled, "Public Automobiles for passengers";

Section 2594.

Also Section 2564 of Article I of that Code;

Also Section 3917 of Chapter 85 of the Chicago Municipal Code of 1922;

Also the Revised Chicago Code of 1931, Chapter 41, Section 2077; and, finally,

The Municipal Code of Chicago, Chapter 28, Section 28-19.

The particular provision which is contained in substantially similar form in each one of those legislative enactments refers to the requirement that the name of the owner of a cab be displayed in a conspicuous place on the outside of each side of such vehicle.

1340 Has the government any objection to that?

Mr. WILLIAMS: Objection to what? To the Court taking judicial notice?

Mr. LYNTON: Yes.

The COURT: To the court taking judicial notice.

Mr. WILLIAMS: We have no objection to that.

Mr. LYNTON: I offer in evidence a copy of the decree entered in the suit commenced by Yellow Cab Company and Checker Taxi Company against City of Chicago and others, that being the suit in which Judge Feinberg rendered an opinion.

Any objection to that?

Mr. Williams: No objection.

The Court: Received.

(Said document, so offered and received in evidence, was marked Defendants' Exhibit 5.)

Mr. Lynton: I offer in evidence photostatic copy of the affirmance by the Illinois Supreme Court of the last mentioned decree.

Mr. Williams: No objection.

The Court: It may be received.

1341 (Said document, so offered and received in evidence, was marked Defendants' Exhibit 6.)

Mr. Lynton: You may examine.

Cross Examination.

By Mr. Williams:

Q. I believe you testified, Mr. Sokoll, that Checker Taxi Company bought CCM cabs during 1922 and 1923. Did Checker itself buy those cabs or did the drivers buy them? A. The drivers.

Q. Who conducted negotiations for the purchase? A. There was a contract—the drivers negotiated for the purchase of the particular cabs.

Q. That is, the individual driver conducted the negotiations? A. That is right.

Q. Whom did he conduct those negotiations with? A. Well, I presume the head of Checker Cab Manufacturing Company, or its representative.

Q. Did Checker Taxi itself purchase any cabs during 1922 and 1923? A. No.

1342 Q. Were any of the cabs operated by Checker drivers during 1922 and 1923 not manufactured by CCM? A. Many of them.

Q. Can you tell us about how many? A. Oh, in excess of one thousand.

Q. And about how many cabs were operated by Checker drivers at that time? A. I believe about 1,200.

Q. I believe you testified that during 1923 to 1925 you sold taxicabs? A. I did.

Q. What kind of cabs did you sell? A. Willys-Knight.

Q. Is that the only kind you sold at that time? A. Yes.

Q. Did you sell any of those to Checker drivers? A. No.

Q. Did you sell any in Chicago to cab companies? A. No.

Q. Whom were you selling cabs to during that period? A. To individual drivers in Chicago.

Q. Did any of these drivers have connection with
1343 any company similar to Checker, or were they operated completely individually? A. Some of them were connected with groups similar to Checker.

1344 Q. Can you name some of the groups? A. The Circle Cab Company, the Atlantic Cab Company. Those were the only two groups that I know of.

Q. Did you sell insurance to any drivers in that time to whom you sold cabs, that is, the type of drivers, not the individuals? A. Are you referring to the same years?

Q. During the same years, weren't you selling insurance during the same years? A. No.

Q. What year was it that you were selling insurance? A. 1926 to 1931.

Q. Did you sell insurance to Checker drivers at that time? A. No, sir.

Q. Did you sell insurance to Checker? A. No.

Q. Can you tell us whom you did sell insurance to? A. To various individuals, owners of taxicabs, and to members of groups such as the Atlantic, and the Circle, and
1345 United, and other cab companies.

Q. Do you know whether any of these groups to whom you sold cabs during this prior period and to whom you sold insurance were connected in any way with Morris Markin? A. I sold insurance to the Chicago Cab Company, and I did not know then whether it was connected with Morris Markin.

Q. What year was it you sold insurance to Chicago Cab? A. 1930.

Q. When did you first find out that Chicago Cab had some connection with Mr. Markin?

Mr. LYNTON: Object to the form of the question.

Mr. WILLIAMS: He said he did not know at that time.

Mr. LYNTON: I know, but you are now assuming it has ever happened.

The COURT: Sustain the objection.

By Mr. WILLIAMS:

Q. When did you first meet Mr. Markin? A. In 1920.

Q. In what connection? A. He was representing
1346 the Markin Auto Body Company.

Q. Did you have any dealings with Mr. Markin during the period you were with Checker up until, I believe it was about 1923, wasn't it?

Mr. LYNTON: By "dealings" you mean what, Counsel?

By Mr. WILLIAMS:
Q. Answer the question, please.
Mr. LYNTON: I object to the form of the question.
The COURT: He may answer.
The WITNESS: I don't know what you mean by "dealings".

By Mr. WILLIAMS:
Q. Did you have any business relations with him? A. Personally?
Q. Yes. A. None.
Q. Did the Checker Taxicab have any business relations with him?
Mr. LYNTON: Object. I think that asks for a conclusion.
The COURT: Overruled.
Mr. LYNTON: Are you speaking about him personally?
1347 The WITNESS: Well, none that I know of, as a personal matter, between Checker and Mr. Markin.

By Mr. WILLIAMS:
Q. Did Mr. Markin make cab bodies which were used on cabs operated by Checker Taxi?
Mr. LYNTON: Mr. Williams, when you ask a question, will you refer to the company? Because when you say "Mr. Markin", I don't know whether you mean Mr. Markin as an individual, or the Markin Auto Body Works, I don't know which is the subject of your question.

By Mr. WILLIAMS:
Q. Will you answer the question, please?
Mr. LYNTON: Object to the form of the question.
The COURT: Overruled.
The WITNESS: Would you mind repeating the question?
(Question read.)

By the WITNESS:
A. I did not know that Mr. Markin as an individual made any cab bodies.

By Mr. WILLIAMS:
Q. Did Mr. Markin have any connection with the company that made bodies for Checker Taxi Com-
1348 pany? A. I believe he did.
Q. During what period of time did he have that connection? A. In 1920 and 1921, I believe.
Q. What about 1922? A. I don't know.
Q. Where did Checker Taxi Company get its bodies for the cabs at that time?

Mr. LYNTON: Object. That is assuming Checker Taxi bought bodies. There is no testimony it bought bodies. It bought cabs.

The COURT: Sustained.

By Mr. WILLIAMS:

Q. At one time did Checker Taxi Company buy bodies for the cabs separately? A. Checker Taxi Company never bought bodies in that period of time from anybody.

Q. I say, at one time did Checker Taxi Company buy bodies separately? A. I have already testified, Mr. Williams, that Checker Taxi Company never bought any bodies at that time from anybody at all.

Q. Did Checker Taxi buy at one time bodies for
1349 the cabs separate from the chassis? A. Yes.

Q. For how long did that practice continue? A. Let us say until about 1923 or 1924.

Q. During that time were those bodies all bought from Markin Body Company? A. No.

1350 Q. Whom else were they bought from? A. There were at least a half dozen other body companies. Kuehne Body Company, for one. I remember that one because I bought a body.

Q. Did they buy bodies from Markin Body Company, buy some bodies during this period? A. Yes.

Q. Was there a change of policy about 1923 that they did not buy bodies?

Mr. LYNTON: You mean—

By Mr. WILLIAMS:

Q. What occurred in 1923? You say they bought bodies up to 1923. What occurred with respect to buying bodies after that period?

Mr. LYNTON: I don't understand that. You mean they bought bodies in 1923, and then what happened?

Mr. WILLIAMS: There is no objection pending.

By the WITNESS:

A. There were on the market a sufficient number of 7-passenger automobiles available, as used cars, and the drivers naturally bought them in preference to purchasing a body to place on the chassis.

By Mr. WILLIAMS:

Q. Do you know whether anyone besides Gen-
1351 eral Transportation Company owned any stock in Chicago Cab during the time you were with it? A. No one.

Q. Do you know whether or not General Transportation Company owned all of the stock of Chicago Cab during that period? A. That was my understanding.

Q. As I recall your testimony, it was that the drivers—let me see here.

The Chicago Cab bought no cabs from Checker Cab Manufacturing Company, is that correct? A. That is correct.

Q. During the life of the company. Did Chicago Cab drivers buy any cabs from CCM during that period? A. No.

Q. Did they buy cabs from anyone during that period? A. Yes.

Q. Whom did they buy cabs from? I am referring now to the drivers, not to the company. A. The drivers bought automobiles which they converted into taxicabs from various automobile dealers.

1352 Q. Can you tell us about how many were bought during that period of the life of Chicago Cab? A. Possibly one hundred.

Q. And how many cabs were operated by Chicago Cab? A. I believe it was between 200 and 300 cabs.

Mr. LYNTON: I can't hear you.

The WITNESS: I believe it was between 200 and 300 cabs.

By Mr. WILLIAMS:

Q. Did that number vary during the life of the company? A. Yes.

Q. At what point in the life of the company were there about 300 cabs operated? A. Shortly after June, 1930.

Q. And when did they get down to the 200 number? A. They gradually reduced from 1930 to 1932, due to economic conditions.

Q. As part of your going with Chicago Cab, do you recall whether you were to provide certain city taxicab licenses to the company, or to help the company secure them? A. I think there was something said about that.

1353 Q. I call your attention to Government Exhibit 45, minutes of a meeting of Parmelee Transportation Company on May 28, 1930.

Mr. LYNTON: Was Mr. Sokoll present at that meeting?

Mr. WILLIAMS: Mr. Sokoll was not present at that meeting.

Q. Perhaps this will refresh your recollection, if I read this:

"The Chairman then stated he was conducting negotiations with Michael M. Sokoll of Chicago for the formation of a taxicab unit in Chicago around the DeLuxe Motor Cab Company. The plan provided for the transfer of the stock owned by this corporation in General Transportation Corporation, which owns all except 10½ shares, of the capital stock of DeLuxe Motor Cab Company, to voting trustees, and the delivery of 50 per cent of the voting trust certificates representing said General Transportation Corporation stock to Michael M. Sokoll, in consideration of the delivery by Michael M. Sokoll to the DeLuxe Motor Cab Company of complete and valid licenses to operate at least 350 taxicabs in the City of Chicago,
1354 Illinois."

Does that refresh your recollection concerning the provision for taxicab licenses by you?

A. Well, there may have been some discussion about licenses, as to the transfer of licenses.

Q. Do you recall whether you were able to provide the whole 350 licenses?

Mr. Lynton: Or any part of them?

By the Witness:

A. I did not provide any licenses.

By Mr. Williams:

Q. Did you cause anyone to come into the company who brought licenses with him? A. No.

Q. Where did Chicago Cab Company secure its drivers? Did they come from other cab companies? A. There were a number of DeLuxe Cab drivers who joined.

Q. Were there drivers of any other company who joined? A. Some drivers from the United Cab Association, Bauer Cab Association, the Atlantic Cab Association, and the Circle Cab Association.

Q. Did you conduct any of the negotiations that
1355 led to those drivers coming into Chicago Cab from these concerns, other than DeLuxe? A. I did.

Q. And I take it you were successful in getting drivers to come in?

Mr. Lynton: Those drivers that did come in.

By the Witness:

A. Some of them.

By Mr. WILLIAMS:

Q. Tell us about what proportion you were successful in getting in?

Mr. LYNTON: What proportion of all persons whom he discussed that topic with at any time during that period; Is that the question?

Mr. WILLIAMS: There is no objection pending.

Mr. LYNTON: Object to the form of the question.

The COURT: He may answer.

By the WITNESS:

A. I could not possibly estimate that.

1356 Q. Do you recall about how many drivers you did secure for Chicago Cab Company other than from DeLuxe? A. Oh, possibly a hundred and fifty.

Q. Did those drivers bring their cabs with them when they came in? A. Most of them, yes.

Q. What kind of cabs were they? A. Various makes.

Q. Were there any CCM cabs in them? A. I don't believe so.

Q. I believe you said Mr. L'Amoreaux had an interest in Cab Sales at the time, or about 1931, is that correct, about the time you went with Checker? A. That is right.

Q. Do you know whether Mr. L'Amoreaux owned that stock for himself, or whether he held it as a nominee for Mr. Markin? A. I would not have any knowledge of that.

Q. How do you know Mr. L'Amoreaux owned that stock? A. Mr. L'Amoreaux told me that.

1357 Q. Were you with Checker at the time that Cab Sales secured a commission on gasoline and oil and other things that it purchased from Benzoline and that were delivered by Benzoline to Checker?

Mr. LYNTON: I object to the form of the question. I think that counsel is referring to the entry of an agreement, but I think the question, when it says "secure" is rather ambiguous.

Mr. WILLIAMS: I will rephrase the question:

Q. Do you recall that there was an agreement by which Checker acquired gasoline and oil from Benzoline, and by which Cab Sales obtained a commission on those purchases by Checker? A. Yes.

Q. What did Cab Sales do if anything to earn that commission? A. Cab Sales negotiated the contract for the purchase of the gasoline, which was very beneficial to the Checker Taxi Company.

Q. Is that all that Cab Sales did, was just to negotiate the contract? A. Yes, that is all.

Q. You say the contract was very beneficial to Checker. How was it beneficial? A. In that Checker obtained
1358 the purchase of gasoline at a price much lower than it could buy it from anyone else.

Q. On what do you base that statement? Had Checker tried to buy gasoline at other prices?

Mr. LYNTON: I object to that. I think the witness has answered the question.

The COURT: Overruled. He may answer. It is cross examination.

By the WITNESS:

A. Checker had purchased gasoline from other sources. By that, it judged that the price offered to Cab Sales was good.

By Mr. WILLIAMS:

Q. Do you recall what those prices were at that time, before this contract? A. My memory is not that good.

Q. From what other company did Checker buy gasoline before it acquired it from Cab Sales? A. Various other companies.

Q. Can you name some of them? A. Well, I think it was United. A man named Stone was the manager of it, and I knew him personally. He had sold gasoline to Checker for several years prior to this contract with
1359 Benzoline, and while I cannot recall the amount paid at the time, it was several cents lower per gallon, at least two cents lower per gallon.

Q. What was United? What business was United in? A. They were gasoline distributors.

Q. Did they distribute any of the national brands of gasoline? A. I believe so. I still am not certain about the name United. I am certain about the name Stone. He was the manager and proprietor of it.

Q. Did United sell gasoline to anyone other than Checker? A. I believe they did; in fact, I know that they did.

Q. During the period that Checker bought gasoline from United, had it tried to buy gasoline elsewhere?

The WITNESS: Will you repeat that question, please?

(Question read.)

By the WITNESS:

A. I would not know that because that was prior to
1360 my taking over the management of Checker in 1931.

Q. Were you manager of Checker in 1931, or were you manager of Checker at the time the contract with Cab Sales was negotiated?

Mr. LYNTON: You mean the contract between Benzoline and Cab Sales?

Mr. WILLIAMS: The contract for the purchase of gasoline.

Mr. LYNTON: With the Benzoline Company? Otherwise, I object to it.

Mr. WILLIAMS: The purchase by Cab Sales of gasoline that came from Benzoline.

A. I don't believe so.

Q. Then you don't really know what the considerations were or what happened at the time Cab Sales Benzoline Checker contract was entered into, is that correct?

Mr. LYNTON: I object to that. The witness has testified to a lot of facts.

Mr. WILLIAMS: This is cross examination, Counsel.

The COURT: He may answer.

The WITNESS: Will you repeat the question?

(Question read.)

By the WITNESS:

1361 A. No, other than my assumption that the price of the gasoline was the consideration.

By Mr. WILLIAMS:

Q. Is that just an assumption on your part? A. Yes.

Q. Do you recall that there was a contract entered into in settlement of the litigation between Checker Cab Manufacturing Company and Checker; the date of the contract, as I recall, was February 5, 1930, which provided that all cabs purchased by Checker drivers or to be purchased for a period of five years were to be purchased from Checker Cab Manufacturing Company; do you recall there was such a contract? A. I had heard of it.

Q. That contract was in effect while you were manager of Checker, was it not? A. That is right.

Q. Now, during that period, did the drivers of Checker purchase their cabs from Cab Sales pursuant to the contract? A. Some of them did, yes.

Q. I take it some of them did not A. That is right.

1362 Q. Will you explain why it was that some of them did not buy cabs pursuant to the terms of the contract?

Mr. LYNTON: I object to that. It is an incompetent question. It asks for hearsay.

The COURT: Sustained.

By Mr. WILLIAMS:

Q. Did you have any discussion with Morris Markin concerning the failure of Checker drivers to purchase cabs from Checker Cab Manufacturing Company during the period that this contract was in existence? A. You mean between 1936—

1363 Q. February 5, 1930 and February 5, 1935? A. You mean Morris Markin?

Q. Yes. A. No.

Q. Did you have any conversation with anyone from the Checker Cab Manufacturing Company concerning the failure of Checker drivers to buy CCM cabs during the life of this contract? A. No one from the Checker Cab Manufacturing Corporation.

Q. Did you have any conversation with Mr. L'Amoreaux concerning the subject? A. Yes.

Q. Will you tell us what that conversation was, please, and where it was, and when, if you can recall? A. It was somewhere around June, 1932. The depression in the United States had set in very badly and it affected the taxicab business to such an extent that we were losing drivers and could not maintain our fleet at the top level, which then was 1,500. I suggested to Mr. L'Amoreaux that it would be wise for all parties concerned, if we

1364 could obtain a modification of the contract so as to permit drivers to buy used automobiles to replace their equipment, which was fast wearing out and becoming beyond the point of decency in the way of service. We had several discussions on the subject, and Mr. L'Amoreaux assured me he would do everything possible to get Checker Cab Manufacturing Company to modify its contract, and that was done.

Q. Did Mr. L'Amoreaux then inform you that Checker Cab Manufacturing Company had modified the contract? A. He did.

Q. Do you know whether or not that modification was in writing? A. I think it was.

Q. Do you know about how many cabs were purchased by Checker drivers from Cab Sales under that contract? A. I would say about one hundred.

Q. Did Cab Sales perform any services after the cars were delivered to the Checker drivers? A. Not that I know of.

Q. Did Cab Sales maintain a repair shop to check up on the cars that were sold to the Checker drivers? A. Yes, I believe they did. Yes, they did.

1365 Q. Did they charge the drivers for the services of repairing the cabs? A. I am sure they did.

Q. Do you know whether they ever did any repairs on the cabs free of charge because of defects in manufacture? A. I believe so.

Q. Do you know or are you guessing? A. No, I would not know that. I just believe that from what I heard of the transaction.

Q. So far as you yourself are concerned, you don't know anything about that, is that right? A. I would not know.

Q. What sort of service did Cab Sales perform in selling cabs; what kind of staff did they maintain, do you know, at this time this contract was in effect? A. I believe they had a salesman and some stenographers and maintained an office.

Q. Do you know whether they sold any cabs to anyone other than Checker drivers at that time? A. I don't believe so. They may have, but I don't know.

Q. Now, are you guessing on this, or is that some-

1366 thing you recall? A. You are referring to a period prior to my association with either Checker or Cab Sales, and I am merely guessing.

Q. No, I want to limit it to the period after you came with Checker. Now, this contract, you said, existed up to 1932, and, as I recall, you came with Checker in 1931, is that right? A. That is right.

Q. The contract originally was to run for five years, and I believe you said it was modified in 1932, is that correct? A. It was not cancelled, it was modified.

Q. Do you know just what that modification was? A. It merely permitted drivers to purchase cars other than those manufactured by Checker Cab Manufacturing Corporation during the period of the depression.

Q. Now, after you came with Checker, do you know whether Cab Sales sold any CCM cabs to other than Checker drivers? A. Are you referring to new cabs?

Q. Yes. A. I don't believe they did.

1367 Q. Do you know whether they made any effort to make such sales? A. I would not know that.

Q. When were you first connected with Cab Sales? A.

In the latter part of September or the first part of October, 1933.

Q. Did Cab Sales make any effort to sell CCM cabs to other than Checker drivers after you became connected with Cab Sales? A. No.

Q. Did it maintain any salesmen after the time you became connected with it? A. No.

Q. Did it make sales of CCM cabs to Checker drivers after you became connected with Cab Sales? A. No.

Q. Now, when defaults in payments were made by cab drivers on cabs sold by Cab Sales, were those cabs repossessed? A. Yes.

Q. Now, you referred to the Shapiro fleet this morning. Were the drivers in the Shapiro fleet charged a service charge in the same way that the Checker drivers
1368 were? A. No.

Q. What was the arrangement by which those drivers were paid? A. Mr. Shapiro hired the drivers to drive for him as a contractor with Checker Taxi Company. He paid them a commission.

Q. Did Mr. Shapiro pay any service charge on the cabs to Checker Taxi? A. Yes, he did.

Q. Can you tell us how that service charge compared with the service charge charged to other Checker drivers? A. In some total, it was greater than that charged to other Checker drivers.

Q. Can you tell us what the service charge was that Mr. Shapiro paid, what the items were and how it was figured? A. For all that period it was $60 a double shift and $40 a single shift. A driver-owner-contractor could allocate to the driver either a single or double shift. In the case of Mr. Shapiro, all cabs operated by him were charged on the basis of a double shift, so that he paid $60 a month for each
cab be operated.

1369 Q. He paid that $60 to Checker? A. That is right.

Q. Then, as I understand, he paid a commission to the driver? A. That is correct.

Q. What happened to the difference? Did that go
1370 to Mr. Shapiro personally? A. No. The fleet was owned by Cab Sales and Parts Corporation. Mr. Shapiro was operating it for Cab Sales and Parts Corporation.

Q. Then the payments were actually paid to Cab Sales, and reflected on the books of Cab Sales? A. It was paid by Mr. Shapiro, and in the final analysis, it appeared on the books of Cab Sales and Parts Corporation.

Q. What about the money taken in by the drivers on their shifts? Was that considered to be money of Mr. Shapiro or money of Cab Sales? A. Money of Cab Sales.

Q. What do you mean by single shift and double shift? Will you explain that, please? A. A driver-owner was privileged to hire an agent to drive part of the day. The assumption was that he would drive ten hours and not more than twelve, and the second shift driver would take up the rest of the time.

Q. So that he might have the cab in service during ten or twelve hours on one shift, and ten or twelve hours on the other shift, is that right? A. That is right.

Q. Now, at the time that Mr. Shapiro suggested
1371 the purchase of CCM cabs, do you know whether Mr. Markin, or did you know at that time, whether Mr. Markin owned any stock in CCM? A. CCM?

Q. Yes. A. Yes.

Q. What do you know about that stock ownership? A. Practically nothing more than that he owned stock in it.

Q. Did you know that Mr. Markin was then president and general manager of CCM? A. Yes.

Q. Who owned the Cab Sales stock at that time? A. You are referring to exactly what period?

Q. At the time Mr. Shapiro suggested to you that you should purchase 500 CCM cabs for the Shapiro fleet? A. I believe Mr. Markin was the sole owner of Cab Sales stock then.

Q. I believe you said Mr. Shapiro told you that he had information Yellow was going to purchase new cabs. Did he tell you how he obtained that information? A. He
1372 said the drivers were talking it up. Later it appeared in the public press, and I knew about it.

Q. Had you heard about it before that? A. No, I was kept too busy to listen to rumors.

Q. Did I understand you this morning that you testified that you had never suggested to any driver of Checker that he cease driving his cab, is that correct? A. With reference to what?

Q. That he stop driving, that he go out of the business of operating a Checker Cab. A. Well, if we had a driver who violated one of our rules, serious rules, that would not apply. Is that what you are referring to?

Q. Well, that answers that question.

Now, have you ever made any suggestion to a driver that he stop running his cab for some other reason than infraction of a rule? A. No, not that I know of.

Q. Do you recall that during 1937, particularly from June, 1937, on to March of 1938, there was quite a drop in the number of cabs operated by Checker drivers; do you recall that? A. I do.

1373 Q. What caused that drop? A. Economic conditions. The history of the strike in 1937 was before the Public Vehicle License Commission and hearings before the Committee on Local Transportation were rife with information given by others and myself to the effect that these men could not continue to earn a living driving these cabs.

Q. Now, what happened to the drivers of those cabs that would cause those particular drivers to cease driving cabs during that period, or stop driving? A. I would not know that unless you gave me the name of a particular person.

Q. At the conclusion of the strike, were you double shifting all of your cabs, or single shifting, or was it a mixture? What was the situation? A. There has never been a period in my operation of taxicabs where all cabs are double shifted.

Q. What was the situation at that time? A. There was a large number of single shift cars, I believe.

Q. Now, was there any change with respect to the

1374 proportion of single shifts during the period following the strike up until March, 1938? A. I just cannot remember the details of that.

Q. Did you follow a policy of double shifting cabs as the number was reduced, increasing the double shifts and cutting down on the single shifts? A. We followed no policy except our policy always is to double shift as many cabs as economic conditions will permit.

Q. So that I understand there was no change between single and double shifting between the end of the strike and March, 1938, is that correct? A. None other than the factors I mentioned.

Q. Now, you referred this morning to discussions with Yellow about the time of the strike. Now, can you fix those discussions more definitely as to date, particularly the discussions as to reducing the number of cabs being operated by Checker drivers? A. Well, those discussions started in March, 1937. I think it was March 12th that the drivers went on strike, and they were out for some twenty-two days—about March 12th.

Q. Mr. Sokoll, I read from Government's Exhibit 385—First, let me show you the initials at the bottom of

1375 the page. Are those your initials at the bottom of that letter which is Exhibit 385? A. I would say so, yes.

Q. This letter is addressed to Mr. Markin and reads:

"I am transmitting herewith schedule showing actual amount of revenue which Checker has lost due to retiring cars under the interim agreement with Yellow from April 1, 1937, to and including November 20, 1937."

Can you tell me what that interim agreement was? A. The term "interim agreement" was just a phrase. There was no agreement.

Q. Do I understand you to say when you use the term interim agreement you are not referring to an agreement? A. There could not have been an agreement at that time.

Q. What were you referring to by those words "interim agreement"? A. I had had some discussion with Mr. Levin Rank, and I had suggested to him that I could
1376 not, because of the type or method of operation of Checker, I could not permit myself to reduce the income of Checker without being compensated for it.

Mr. Rank assured me that if the City Council reduced the number of cabs, that he would see that I was compensated.

I refer to that as the interim agreement. It was not an agreement, because without the consent of the Council to reduce the cabs, we had nothing to talk about in the way of an agreement.

Q. There was no agreement in writing, is that correct? A. In writing or verbal. It was just an understanding if something happened which resulted in an agreement, we would be paid for it. That is, Checker would be paid for it.

Q. Now, did you have any discussion with Mr. Rank about whether you would be paid for cabs removed from service during 1937 regardless of whether the ordinance was enacted? A. No.

Q. Did you have any discussion as to whether you would be paid for removing Checker cabs from service if the ordinance was enacted?

1377 The WITNESS: Will you read that question?

(Question read.)

By the WITNESS: Yes.

By Mr. WILLIAMS:

Q. Will you tell us what that discussion was about, where it was, and when it was? A. Well, we had some discussions in March after the strike took place. We were trying to

settle the strike, and in the periods of quiet, why, we talked somewhat about the causes of the strike, or the underlying causes of it, and Mr. Rank told me that in his opinion if we did not take notice of the economic conditions affecting the drivers, we would just have another strike and still another one, and I said I believed that was correct, and that led to some more talk about whether or not more cabs should be taken off the streets, and he said in his opinion Yellow should take some off and Checker should take some off, and the individuals, or what we call street hack fellows that own his own cab and was not affiliated with anybody else—I told Mr. Rank in my opinion there was no

1378 possibility of an independent giving up a license because after all, if he had one license, that is all he had, and if any licenses were going to be given up or if any cabs were removed from the street, it was to be Yellow and Checker.

He said, "That is good. We will take some off and you take some off."

And I said, "No, I don't take any off unless you compensate me."

That was the substance of our conversation.

Q. What did he say to that? A. He said if I did that, he would compensate me, and that is what I referred to as an interim agreement in my memorandum to Mr. Markin.

Q. What was the compensation to be? A. Well, it was somewhat indefinite. I suggested we ought to be paid fifty percent of all the service charges, and Mr. Rank said, "Well, you certainly don't mean to include insurance cost, because you won't have that cost."

Well, at the time, it was rather indefinite.

I said, "We might work that out", and that is where it rested.

1379 Q. Did you then retire cabs from service as the result of this discussion with Mr. Rank? A. We did not retire any cabs from service at any time. All we did was simply not replace those cabs where the drivers gave up their contracts.

Q. Do I understand that sufficient drivers gave up their contracts voluntarily, without any request from you during this period to reduce your number of cabs from 1500 in April, 1937, down to 995 in April, 1938, as shown by Exhibit 398? A. Yes.

Q. Was it normal for you to have that many drivers give up contracts during such a one-year period? A. We had

a very difficult time maintaining our fleet at its peak level in all the years from 1932 to 1937. We had to go to the extremes of pleading with drivers to come in and join us. The equipment that we accepted as a part of our service was not at all satisfactory most of the time and, as I testified previously, we even had to go to the extreme of getting permission from Checker Cab Manufacturing
1380 Corporation to permit us to take in used cars. We did not consider that a good operation. We did that only in the extreme that we just could not get men to join with us.

Q. I point out that Exhibit 398 shows that from January, 1936, to about April, 1937, the total cabs operated by Checker drivers varied only slightly from 1,000. It is 954 in January, 1936, and it hit as low as 937 in February and stayed above that 937 figure and got up as high as 1,000 in October and December, but that following May of 1937, it dropped. In May it was 962; in June 911; July 838; August 820; September 729; October 794, and January of 1938 it was down to 664, and in March of 1938 it was down to 585.

1381 Mr. LYNTON: He would like to see that, Mr. Williams.

The WITNESS: May I see that, please? Would you mind repeating those dates?

By Mr. WILLIAMS:

Q. The dates from here on down. Now, was the drop-off in the number of Checker drivers due entirely to conditions such that existed prior to April of 1937? There was no change in conditions at all entered in there, is that your testimony? A. In 1935, Cab Sales & Parts Corporation purchased 500 new automobiles.

Q. That is also shown in that exhibit in the proper column? A. That takes effect just about in January, 1936.

Q. All during this period, the 500 remains the same? A. Yes, sir.

Q. Right up to March, 1938? A. Yes. Now, we kept losing men in January, 1936 to the extent of 46 in February.

Q. Now, you are reading from those figures as
1382 shown on Exhibit 398? A. That is right. In February, we were down to 937 individual owners. Then we went up to 948 in March, and this exhibit shows clearly that there was a fluctuation in the number of cabs operated

by individuals all through this period. One of the reasons was that some of the men who owned cabs wanted to go to work on this automobile. Now, the only way we could maintain individual owner group at a thousand was by solicitation, the usual salesmanship approach. In order to get these men in, we had to offer them inducements. One of the inducements was to accept an inferior automobile, which was not good practice in the operation of taxicabs. Another proposition we offered them to induce them to join was we permitted some of the old men to take in more than one cab and hire drivers. The net result of that was by the end of 1937, we had a fleet that was decrepit and sometimes disgraceful.

Q. You mean by the end of 1937 or by the time of the strike? You said by the end, is that what you mean? A. All during the period 1936, 1937 and through 1938.

1383 Q. What I am seeking is an explanation for the sudden drop-off following the strike in 1937. A. The sudden drop-off in the first place was due to very bad economic conditions, the one that caused the strike itself, and all that happened here is we just did not seek out new members to join up.

Q. Did you stop offering inducements after the strike to get new men to join? A. We certainly did not offer inducements which would bring in decrepit equipment.

Q. Do you recall whether you took in new men following the strike as Checker drivers? A. No, we did not.

Q. Did you have any applications for men to come in during that period as Checker drivers? A. We hired many Checker drivers.

Q. I don't mean hiring of drivers; I mean owner-drivers. Did you have any application for owner-drivers following the strike of 1937?

Mr. Lynton: You mean applications by the owner-drivers?

Mr. Williams: Applications by men to come in as owner-drivers.

1384 By the Witness:

A. We may have had, but I just don't remember.

By Mr. Williams:

Q. Do you have any recollection as to whether any applications, if there were any, were accepted by you? A. No, they were not accepted.

Q. Did you discuss with Mr. Rank whether or not you would, following the strike, accept applications of new

owner-drivers? A. I did not discuss any features of my operation with Mr. Rank at all. I had discussed the matter with him from the standpoint of reductions, and I devised my own means of procedure.

Q. Except in so far as you have testified as to discussions with him, is that correct? A. That is correct.

The Court: The court stands recessed for ten minutes.

(Thereupon a recess was taken.)

1385 By Mr. Williams:

Q. After the 1937 strike, did you tell any Checker drivers that they had to withdraw their cabs from service for other than serious infraction of the rules? A. Well, there may have been some cabs that were unserviceable. Yes, there were.

Q. What do you mean by "were unserviceable"? What did you consider unserviceable to mean at that time? A. Well, when a cab reaches a point where it is unsafe or its appearance is of such a nature that it does not appeal to the public, then it is unserviceable.

Q. Can you tell us about how many drivers had to withdraw their cabs during 1937 following the strike because their cabs were unserviceable?

Mr. Lynton: Object to the question as assuming an implication that has not been testified to by the witness. He did not say the drivers had to do that.

Mr. Williams: I will withdraw that and reframe the question.

The Witness: I did not quite finish my answer.

1386 Those men were told to withdraw those cabs and replace them with others that were serviceable.

By Mr. Williams:

Q. Can you tell us how many drivers were told that, following the strike during 1937? A. I could not possibly answer that.

Q. Is it a few, such as ten, or would it run up to one hundred or more? A. It might have been a hundred.

Q. Did any driver to whom that was told, to your recollection, secure a cab that was adequate and continue as an owner-driver? A. I believe there were; there were lots of them.

Q. About how many, have you any idea? A. Well, at least half of the possible hundred.

Q. During your discussions with Mr. Rank in 1937, did you have any discussion concerning whether all of the licenses to be relinquished by Checker, if an ordinance

were passed, would be relinquished by the owner-drivers of Checker? A. The owner-drivers of Checker had no licenses.

Q. Would be relinquished with respect to cabs which were driven by owner-drivers. A. No mention was made of how it was to be done.

1387 Q. Did you have any discussion with any representative of Yellow Cab Company concerning whether the cut in licenses would come from the owner-driver cabs or from the cabs owned by Cab Sales? A. I don't believe I had any discussion with anyone else with reference to licenses, except Mr. Rank.

Q. As a matter of fact, the cut was made entirely in the owner-driver licenses, was it not?

Mr. LYNTON: Object, because that assumes a state of facts not proven—that a cut was made. There was a reduction of the total number of licenses. There is no testimony here that a cut was made.

Mr. WILLIAMS: Substitute the word "reduction" for "cut".

The COURT: Objection sustained.

Mr. LYNTON: What is the question?

By Mr. WILLIAMS:

Q. Were there any discussions with any representatives of Yellow that the reduction in licenses, if an ordinance were passed, would come from the licenses on cabs

1388 operated by owner-drivers instead of cabs operated by Cab Sales employed drivers? A. I don't believe there was any discussion with any representative of Yellow.

Q. Well, when the reduction in licenses was made, was it made in Cab Sales employed drivers, those cabs that were driven by employees, or was it made in cabs driven by owner-drivers?

Mr. LYNTON: Object to the question because it assumes a state of facts not proven.

The COURT: Sustained.

By Mr. WILLIAMS:

Q. Was there any reduction made in the number of licensed cabs operated by Cab Sales employed drivers subsequent to March, 1937, and during the year 1937?

The WITNESS: I did not hear the first part of the question.

Mr. WILLIAMS: Please read the question.

(Question read.)

By the WITNESS:

A. Cab Sales employed drivers did not have any licenses.

Mr. Williams: I don't believe that is responsive to the question. Read him the question again, please.

1389 (Question read.)

Mr. Lynton: Do you understand that question, Mr. Sokoll; do you understand the meaning of it?

1390 The Witness: I don't understand it.

Mr. Lynton: I object to the question.

The Court: Overruled. I think it is a simple question—reduction, not of licenses, but reduction of the number of cabs.

The Witness: Do you mean the reduction of 500 cabs that Cab Sales was operating?

By Mr. Williams:

Q. Yes. Was there any reduction in that number? A. No, there was not.

Q. Before the agreement of January 3, 1938, between Checker, Cab Sales and Yellow was entered into, did you see any draft of that agreement prepared by the firm of Kirkland-Fleming? A. I believe I did.

Q. Do you recall about the date that you saw that draft? A. No. It was sometime before the date it was signed.

Q. Do you recall whether it was as early as August? I show you Government Exhibit 380, which is letter

1391 from Howard Ellis to Benjamin Samuels, dated August 31, 1937, enclosing a rough draft copy of Yellow-Checker contract.

Mr. Lynton: Is there any indication that a copy went to Checker or Cab Sales?

Mr. Williams: There is not.

Q. Do you recall whether you saw a draft of the contract of January 3, 1938, as early as August, 1937? A. No, I don't think so.

Q. Do you recall about when you did see such a draft? A. Well, I may have seen it sometime after August 31st.

Q. Did you negotiate with any representative of Yellow Cab as to the terms of a contract prior to August 31, 1937? A. Yes.

Q. I mean actual written words, not just the preliminary negotiations; did you actually work on a draft? A. I am quite sure that I did.

Q. Did you work with anyone from the Kirkland-Fleming firm on that draft? A. No; the only one that I saw

1392 up until at least that date in connection with this matter, was Mr. Rank.

Q. As I understand, did you go over the language of this draft with Mr. Rank prior to August 31st of 1937? A. No, I am sure I did not.

Q. Isn't it a fact that you informed Mr. Rank that if Checker relinquished licenses that they would be relinquished from the group of licenses owned by Checker and operated by driver-owned cabs as distinguished from licensed taxicabs owned by Checker or Cab Sales? A. I don't believe there was any discussion about that.

Q. I show you Government Exhibit 380, which I just referred to as the letter and the draft, and I call your attention to paragraph 1 of this draft, on page 6. That paragraph reads:

"Checker promises and agrees as follows:

"(a) To relinquish to the City of Chicago * * * 500 of the taxicab licenses now held by it, on or before the day of 19 , which 500 licenses shall be relinquished from that group of licenses
1393 owned by Checker and operated by driver-owned taxicabs as distinguished from licenses used by taxicabs owned by Checker or by Cab Sales."

Does that refresh your recollection concerning this point? A. Yes, it does.

Q. Tell us what you now recall. A. I don't believe there was any discussion prior to the presentation of this draft of this contract with reference to how it was to be done.

Q. Was there a discussion when this draft of the contract was presented? A. Yes, there was.

Q. What was that discussion and who was present? A. It was discussed by Mr. Rank and myself.

Q. Tell us what it was. A. He suggested that—he said that he thought that we ought to reduce from the licenses that were not assigned to Cab Sales fleet in preference to the others.

Q. Did he state why he thought you should do that? A. I don't just remember why. We had some discussion
1394 on the subject. It did not seem important at the time.

Q. Do you recall anything further about that discussion, any statement you made in response to it, or any further statement you made? A. I said I thought we would do that.

Q. Were you an officer of Checker at that time? A. I was president of Checker at that time.

Q. About when did this conversation take place? Can you tell us the approximate date? A. There were several conversations between March of 1937 and January 3, 1938.

Q. I am referring to the one where you had this draft, which is Government Exhibit 380. A. That was very late in 1937.

Q. Do you recall about how long it was after August 31, 1937, which is the date appearing on the transmittal letter, Exhibit 380? A. No, I would not recall it.

Q. Do you recall whether it was prior to Christmas, or maybe about Thanksgiving? A. It may have been.

Q. As I understand your testimony, you said that the two —that half of the fees, srevice fees, that Checker lost
1395 by cutting down its operation of cabs, would be paid in the event that an ordinance was executed, is that correct?

Mr. LYNTON: No, he did not so testify. Are you asking him a new question as to whether that is a fact? He testified there was discussion concerning—

Mr. WILLIAMS: Will you answer the question, please?

Mr. LYNTON: Object to the form of the question, because it misstates the testimony.

Mr. WILLIAMS: Please read the question.

(Question read by the Reporter.)

By the WITNESS:

A. That was our discussion.

By Mr. WILLIAMS:

Q. Was that the understanding, your understanding during 1937, when the number of cabs operated was reduced? A. I believe I said in my testimony that Mr. Rank said that he thought that might be acceptable, but he did not agree to it.

Q. What was your understanding concerning it? Was it your understanding it would be paid if the ordinance was passed?

1396 Mr. LYNTON: Objected to, incompetent and immaterial.

The COURT: Overruled.

By the WITNESS:

A. No, I merely understood Mr. Rank to say that he would try to come to an agreement satisfactory to me.

By Mr. WILLIAMS:

Q. Do you recall whether you ever presented a bill to Mr. Rank because of the cutting down of cabs? A. No, I don't believe I ever gave him a bill.

Q. I will show you Government Exhibit 383, which is a letter dated July 8, 1937, from you to Mr. Rank. I want to call your attention to the words of the language:

"I am transmitting herewith a list of cabs withdrawn from service and statement of moneys lost by Checker because of their withdrawal. The amount due

us is $6,833.03. Will you please have check forwarded to us?"

Does that refresh your recollection concerning whether you presented a bill to Mr. Rank because of the cutting
1397 down of the number of cabs? A. I remember distinctly sending this to Mr. Rank, and I remember distinctly our conversation pertaining to it. He said, "You mean that you expect me to pay this?"

I said, "That is merely a reminder of what we talked about."

And he said, "We have not agreed to that."

Mr. LYNTON: What is the date of that letter, Mr. Williams?

Mr. WILLIAMS: July 8, 1937.

Q. When did this conversation with Mr. Rank take place? A. Sometime after I sent that letter to him.

Q. Was that all of the conversation concerning the payment of this money? A. No, we had so much conversation about it, and I think I sent him more memorandas in reference to the money we lost, but we never came to any agreement on that basis.

Q. Did you ever collect any of the money? A. You mean the money that I had listed?

Q. Yes. A. No, never.

1398 Q. I call your attention to Government Exhibit 385. This is a letter from you to Mr. Markin, dated December 28, 1937:

"I am transmitting herewith a schedule showing the actual amount of revenue the Checker has lost due to retiring cabs under the similar agreement with Yellow from April 1, 1937, to and including November 30, 1937. I am also including the estimated revenue for December, using November figures. There will, of course, be some additional cars in the December schedule, which can be accounted for later. According to the schedule, the amount due us is $44,061.05."

I hand you this exhibit. Did you have any conversation with Mr. Rank concerning that $44,000 listed in that exhibit? A. I believe I did.

Q. Will you tell us what that conversation was? A. Merely the discussion of whether they were going to agree to the method of calculation that I suggested.

Q. Do you recall when that conversation was, about
1399 the date? A. Well, there were several such conversations, that took place sometime between March and January, 1938.

Q. Following December, 1937, was there any conversation concerning that paper, following that date? A. I believe there was just after the 1st of the year.

Q. Do you recall whether it was the 1st, 2d or 3d, the approximate date? A. No.

Q. What was the conversation? A. I reminded him again we had not reached any agreement on the method of calculating losses sustained.

Q. What do you mean? A. These lists I sent were my own idea of what I wanted as an understanding. There was no time we agreed that that was the method of calculation or that was the way we were going to go by.

Q. What did he say? A. He said he would try to work it out to my entire satisfaction.

Q. Did he work it out to your satisfaction?

1400 A. No, he did not.

Q. Did you have any further conversation with him concerning that payment? A. Yes. I called his attention to the fact, when an offer was made, final offer was made, which we accepted, I called his attention to the fact that if he had paid us 50 per cent of the earnings of those cabs for the period of time involved, it would have been many, many more dollars than we got.

Q. Is that the only conversation you recall concerning it after the date in December? A. Nothing specific.

Q. I call your attention to Government Exhibit 392, which is the contract of January 3, 1938, between Cab Sales, Checker and Yellow. The contract reads, following the whereas clauses, on page 4:

> "Now, therefore, for and in consideration of the premises and of the mutual promises, covenants, and agreements herein contained, and in consideration of the payment of the sum of $45,000 by Yellow to

1401 Checker simultaneously with the execution and delivery of this agreement, receipt whereof is hereby acknowledged," and so forth.

Were you paid that $45,000 referred to? A. We were.

Q. Why was that payment of $45,000 made to you? A. As a consideration for the contract.

Q. Consideration for what? A. For our signing the contract.

Q. Nothing else? A. Nothing that I know of.

Q. I call your attention to the fact that in Exhibit 385, which was a letter from you to Mr. Markin, December 28, 1937, you claimed that your loss was $44,081, or approximately the same as this $45,000. Isn't it a fact that the $45,000 was payment for the loss incurred by you under the

so-called interim agreement? A. No, because our loss was many, many times $44,000.

Q. The only loss you ever claimed was $44,000, as shown by Exhibit 385? A. Up to December 28, 1937, but these cabs were already out of service, and we certainly had a right to anticipate some revenue from those cabs
1402 in the years 1938, 1939, 1940, 1941, 1942 and 1943.

Q. Did you ever claim any loss—

The Court: Pardon me just a moment.

1403 Q. Did you discuss this payment of $45,000 in the contract of January 3, 1938 with Yellow? A. With Mr. Rank representing Yellow.

Q. What was your discussion concerning that $45,000 payment? A. Well, I objected that it was insufficient, in view of our conversation. He pointed out we had no agreement.

Q. Did Mr. Rank state that the $45,000 was to compensate you for taking cabs out of service during 1937? A. I don't believe he said just that.

Q. What did he say? A. We had some discussion about the amount owing to us, and I objected, or I contended that we should be paid 50 per cent for all the revenue we lost less the insurance fee which was approximately 50 per cent of it, for a period of five years. Mr. Rank disagreed with me.

Q. Was this $45,000 payment connected with this conversation? A. No, that was the final payment as consideration for our signing the contract.

Q. There were two payments in the contract, were there not?

1404 $45,000, a lump sum, then a payment of $550 for each license given up? A. That is right.

Q. I want to talk only about the $45,000. What conversation was there concerning why that payment was made to Checker by Yellow? A. It was merely an offer of $45,000 for a contract consideration at the time, and I pointed out we had more money coming than that. Mr. Rank prevailed, and I finally accepted $45,000.

Q. Why did you have more money coming? What had you done to earn more money you claimed you had coming? A. In all the conversations we had prior to this date, we had talked about the loss of revenue to Checker for the service charges on these cabs, and that loss was a continuing one, and I considered we would have had that revenue in the following years.

Q. Was this $45,000 figure you finally obtained from Yellow as compensation for taking cabs out of service, be-

ginning at the end of the strike in 1937 right down to the date of the contract, and you say now beyond that
1405 date, is that correct? A. I did not consider it as such.

Q. What did you consider it as representing? A. I merely accepted that as part payment on the final proposition.

Q. Did you stop making a claim for more money? A. I made my claim continuously. When I didn't succeed, I finally accepted their offer of $320,000.

Q. What was the offer of $320,000 to represent? Why was that paid to you? A. It was paid to us in lieu of our reducing our fleet.

Q. Wasn't the $320,000 connected, not with past reductions of the fleet, but with future reductions? A. I am sorry I don't quite understand your question.

Q. Let me restate it: Was the $320,000 to compensate you for anything that had occurred prior to the date of the contract? A. I don't believe so, no.

Q. What was it? A. It was paid to us for our performance of the agreement to reduce our fleet by 500 cabs.

Q. Was the $45,000 paid to you for any act you
1406 performed prior to entering into the contract? A. Well, it was a part of everything that had been done in connection with the reduction of these cabs, but not necessarily any particular thing we did.

Q. When you say "everything," will you tell us what is included in "everything that had been done"? A. Reducing the cabs by 500.

1407 Q. That is the reduction that had occurred during 1937, is that correct? A. That would have been part of it.

Q. Now I call your attention to Exhibit 454, which is the reply of Cab Sales to interrogatory, Exhibit 452, which asks the number of motor vehicles purchased in each year from others than CCM. The reply of Cab Sales to that interrogatory was that 35 were purchased in 1933.

Do you recall whether those cabs were manufactured by CCM or who manufactured them? A. 35 cabs were purchased in 1933? Does that mean in connection with cabs manufactured by Checker Cab Manufacturing Company?

Q. The interrogatory served on Cab Sales asked how many cabs were purchased each year from CCM, and how many cabs were purchased each year from others. You notice in the answer which you have in your hand, Exhibit 454, you say none were purchased from CCM, but 35 were purchased from others. A. By Checker?

Q. By Cab Sales. A. Those were probably 35 used
1408 cars of the make or type manufactured by CCM.

Q. That is your best recollection? A. If Cab Sales purchased them, I would say yes.

Q. How about the 138 that were purchased in 1934? Would they also be CCM cabs? A. In that connection, I would say yes, but they were used cars.

Q. Is that also true of the 116 purchased in 1939? A. That would be true if they were purchased by Cab Sales.

Q. Now, in 1940, it shows 100 cabs were purchased from others by Cab Sales. Were they also used CCM cabs? A. In 1940?

Q. It shows you purchased 450 from CCM and 100 from others. A. Yes, I would say that they would be used cabs.

Q. Would they be used CCM cabs? A. Yes.

Q. How about the 58 purchased in 1944? A. Likewise, used CCM cabs.

Q. Then there was 3 purchased in January and
1409 February of 1946. Were they used CCM cabs? A. I believe so.

Q. Then there are 692 purchased in August, 1947. Were any of those used CCM cabs? A. In August, 1947?

Q. Yes. A. No.

Q. Were any of the CCM used cabs purchased from Yellow in Chicago? A. I don't believe so.

Q. Did you place an order for new cabs with CCM in the fall of 1945? A. I did.

Q. How many cabs did you order at that time? A. 1000.

Q. Were they ever delivered? A. No. It was sometime after June, 1945.

Q. During the war, did Cab Sales try to buy used cars to use as cabs? A. By used cars you mean—

Q. Used stock cars. A. No.

Q. Did they try after the war to buy any stock cars to use as cabs? A. They never did, and never would.

1410 Q. I believe you testified you had difficulty getting parts, the CCM stock parts for your Model A cabs you used during the war? A. Yes, I believe we did.

Q. What kind of parts did CCM stock? A. Transmissions and clutches and fans and generators and carbureters and wheels and spindles and driveshafts.

Q. Did you try to buy those parts, or the parts you needed from anyone other than CCM? A. Oh, yes, after CCM ran out of parts, we tried to buy them anywhere and everywhere.

Q. About when did CCM run out of parts, do you recall?

A. I should judge about the latter part of 1943 or the early part of 1944.

Q. You spoke about the difficulty in hiring mechanics. Was that difficulty experienced by Cab Sales or was it experienced by Transportation Maintenance Corporation? A. Both.

Q. Did Cab Sales hire its own mechanics? A. Yes, sir.

Q. Is there any distinction between the class of
1411 repair work done by Cab Sales and that done by Transportation Maintenance Corporation? A. You mean now?

Q. Yes, and during the war? A. Of course at the present moment we do all our own repairs, but during the war we did a part of it, and TMC did the rest of it.

Q. Did TMC do the more difficult jobs, or was there any distinction between it as to TMC and Cab Sales? A. During the war there was no distinction.

Q. Now, you testified concerning your views on Cab Sales attempting to engage in the business that Parmelee is now engaged in of transferring passengers and baggage between stations in Chicago.

Are you aware of the fact that Checker Cab Manufacturing Corporation owns about 61 per cent of Parmelee stock? A. I know they own a large block of stock. I don't know just how much.

Q. Do you know it was more than fifty percent? A. That has been my impression.

Q. How long have you known that? How many years?
A. It is pretty hard for me to locate the exact time,
1412 but I read about it in the press several times. It may have been ten years ago, and it may have been five years ago.

Q. Do you know whether you became aware of it, or whether you were aware of it about 1932 or 1933? A. I don't think so.

1413 Q. Well, since you went with Cab Sales, you have known that Markin was president of CCM, have you not? You were aware of that fact? A. Yes.

Q. You also knew that Markin owned the stock in CCM? A. Yes, sir, I believed that he did. I didn't know that for certain.

Q. You have known of stock holdings of Markin in Cab Sales from time to time, have you not, since you have been connected with Cab Sales? A. Yes, sir.

Q. Did I understand your testimony correctly this morning that you thought that a purpose-built cab was more satisfactory for service in Chicago than the non-purpose-built cabs such as you are now using? A. Yes.

Q. You are now using non-purpose-built cabs, are you not? A. That is right.

Q. Have you always had this view? Let us limit it to ten years; let us say during the past ten years, have
1414 you consistently had the same view? A. Yes.

Q. During that time, do you recall ever telling anyone that you were enthusiastic about the non-purpose-built cabs of the type that you are now using? A. I have told several people I was very enthusiastic about the Ford. I think it is a wonderful car.

Q. Will you tell us why you are enthusiastic about the Ford as used for taxicab service in Chicago? A. The Ford is a fine automobile. It has withstood a lot of hard usage I did not anticipate from stock model cars, but I also said to the same people that I told I was enthusiastic that there are some faults that are very serious in connection with taxicab operations.

Q. Let us talk about the advantages first. What are the advantages of a Ford as used for a taxicab? A. I said the Ford could be economically operated and safely operated. I look at it that way because it had a resale value at the end of a certain time, and that provided for making replacements.

Q. Do purpose-built cabs have a resale value
1415 at the time you dispose of them? A. Not in the same sense that a Ford would have. A resale of a purpose-built cab would be only in the instance where a cab operator wanted some used cabs, or where they were worn out and written off the books by depreciation, could be sold as salvage.

Q. So in general the resale value of purpose-built cabs is less than the resale value of a stock car used as a cab, is that correct? A. Yes, sir.

Q. What about gasoline consumption on purpose-built cabs as compared with the stock cars you are now using; how do they compare? A. Well, that does not vary too much. Our average mileage on the old Model A Checker built by CCM was 9.3 miles per gallon.

Q. At what time was that? A. That was in the years 1940 to 1944, which should have ended their life. Of course, beyond that period, I do not consider any statistics worthy of note. Ford cars have given us a return of approximately 10.3 miles per gallon in the summertime. We were averaging close to 10 miles per gallon. The Model A
1416 Checker weighed over 4,800 pounds. Of course, it was of wood construction, that is, the body was, and we discovered from statistics compiled by engineers by using an all-steel body, the gasoline mileage for the same

type of cab would be over 11 miles per gallon, or should be, rather. That is purely statistical, and it is subject of proof, but currently I know some of these cars operate in New York—some of the owners have told me they are getting 12 miles per gallon.

Q. Do you have any knowledge what they are actually getting other than what they told you? A. No.

Q. What cabs do you refer to in New York, CCM cabs? A. Yes.

Q. What company is operating CCM cabs in New York? A. National Transportation and several small units. My information, however, did not come from the National Transportation. It was from some individual owners, small fleet operators. They are very enthusiastic about the Model A-2, more enthusiastic about it than I ever was.

1417 Q. Model A? A. A-2.

Q. The current model is known as A-2? A. Yes, sir.

Q. What is the weight of that as compared to the cab you used during the war? A. The current weight is 3,850 pounds, according to my last information.

Q. As compared with 4,400? A. 4,800.

Q. Can you replace a stock car such as a Ford oftener than you can a purpose-built cab? A. If you are referring to the present market, the answer would be no, we cannot get replacements.

Q. Based on your experience, what would you expect the situation to be during normal market when you can get replacements? A. Well, a Ford, of that type of car like Plymouth or Chevrolet, must be replaced every twelve months for efficient taxicab operation. After that, the car is unfit for taxicab service.

Q. About how many miles would it travel in twelve
1418 months? A. About 60,000 miles.

Q. What makes it unfit for taxicab service after that mileage? A. Well, the car is engineered and constructed for private use. The Ford Motor Company never expected the use of that car in taxicab service. The parts used are too light. They are not constructed for sufficient wear to withstand the hard usage in our business.

Q. What parts do you have wearing out after 60,000 miles, body parts, spring parts, motor parts? A. Practically every part of the car had to be replaced or rebuilt.

Q. Do you include the body or frame? A. No, not the body.

Q. What about the frame? A. Not the frame.

You are speaking more of the wearing mechanism? A. The motor needs a complete overhaul at 60,000 miles. The clutch will operate for not over 20,000 miles; the transmission less than that.

As a matter of fact, in the month of March we re-
1419 placed over 500 transmissions in our fleet of cars. That, in my experience, is almost unheard of, and ruinous. In replacing the transmission in a Ford, it takes 3½ hours for an expert trained for just that job to remove and replace the transmission. And that has nothing to do with rebuilding of the transmission unit itself.

Q. Is that also true of other stock cars, or is it peculiar to the Ford? A. It is true of Chevrolet.

Q. Isn't the construction different in the Chevrolet than the Ford? A. No, they both have direct torque drive which means, in order to remove the clutch or transmission, you must push back the rear wheel assembly, and that takes a lot of time.

Q. Is that true of all stock cars other than purpose built cabs? A. No.

Q. It is only Chevrolet and Ford of all cars? A. That is right. There are one or two others I am not currently acquainted with, because the construction of automobiles has changed considerably in the last few years.

1420 Q. How about the initial cost of cars such as Ford as compared to the current purpose built cab of CCM? Do you know what the prices are? A. The last group of Fords we bought cost $1,602 or 4 dollars apiece. That was without paint. Then we had to paint them and prepare them for our service, which costs us an additional $132, making a total of $1,736.

The Model A2 Checker when, as and if delivered will cost about $2,250, complete for operation.

The Model A Checker is constructed for 150,000 miles average as against approximately 60,000 for the Ford.

Q. Do you know whether they will give 150,000, or is that the expectation of the builder? A. Since we have had experience with the Model A, I know it will go that far, because the mechanism—some Model A's have gone 300,000, although that is stretched out too far. It is not economic operation.

Q. Did the Model A's go that far without any overhauling? A. Without a complete overhaul.

1421 Q. What kind of overhaul did they get during the 150,000 miles? A. Well, the Model A of the type of construction as shown in the specifications will run at least—

Q. I want to talk about your Model A based on your past experience, not on what they other cabs will do? A. I am basing it on Model A, because I have not had experience with the A2.

Q. Tell us about the Model A, what parts needed overhauling in 150,000 miles? A. We would re-ring the motor at approximately 75,000 miles, which is a very minor job, and that type of work, the re-ringing job in those years cost us approximately $24, and I imagine today it would run around $36.

Now, in overhauling a Ford, Chevrolet or a Plymouth at 60,000 miles, you have to do a complete motor overhaul at a cost to us of $137.

For rebuilding the block, it is approximately $20.00 in labor, which is $157 at 60,000 miles against approximately, at current prices of $36 at 75,000 miles.

Q. When you rebuild a block, do you not get a
1422 motor that is practically new? A. No, it is a rebuilt block.

Q. When they rebuild a block, what do they do? Would they replace the valves, replace bearings, re-line the cylinders and put in new pistons? A. Whenever needed, which means there are some parts in the motor which are worn more than expectancy might be, which sometimes causes trouble.

Now, they don't replace the cylinder wall to the original condition. They have no means of doing that except by reboring, and of course reboring means oversize pistons and that immediately causes trouble.

1423 Q. Are the Fords being built today with a liner of the walls that can be replaced? A. Yes.

Q. Are the liners replaced in those walls in your rebuilt Fords? A. No.

Q. So the term is not reboring? A. The term reboring and replacing the inner cylinder wall is identical. It is just a matter of procedure.

Q. When you rebulid a motor, do you get an oversize piston today in the kind of Fords you are using? A. I beg your pardon?

Q. Do your rebuilt motors have oversized pistons in them? A. As a rule, yes. The business of replacing the cylinder wall is just as simple one way or the other and costs just as much one way or the other.

The Court: The court stands adjourned until 10:30 Monday morning.

(Thereupon an adjournment was taken to 10:30 o'clock a. m. Monday, June 7, 1948.)

1424 No. 46 C 1339

UNITED STATES OF AMERICA, PLAINTIFF,

vs.

YELLOW CAB COMPANY, *et al.*, DEFENDANTS.

Before Judge LaBuy,
Monday, June 7, 1948,
10:30 o'clock a. m.

Court met pursuant to adjournment.

Present:

Mr. Hotchkiss
Mr. Williams
Mr. Lynton
Mr. Ginsberg
Mr. Fuller
Mr. Climenko

The CLERK: Case on trial.
The COURT: Proceed, please

MICHAEL M. SOKOLL, a witness on behalf of the defendants, resumed the stand and testified as follows:

Cross Examination (Continued).

By Mr. WILLIAMS:

Q. Does Cab Sales have a pending order with CCM
1425 for new cabs? A. Yes.

Q. How many cabs are on order? A. 1,000.

Q. When was the order placed? A. Sometime after June 1945.

Q. When do you expect delivery on that order? A. The latter part of this year.

Mr. WILLIAMS: That is all.

Redirect Examination.

By Mr. LYNTON:

Q. Mr. Sokoll, on cross examination, you testified at the last session concerning certain maintenance costs as between the purpose-built cab manufactured by CCM and pleasure cars manufactured by other producers, and I believe you testified that the maintenance cost with respect to pleasure cars was higher than with respect to purpose-built cabs, did you not? A. Yes.

Q. Have you since the last session examined certain of your statistics concerning those maintenance costs?
1426 A. I did.

Q. What periods of time did you use for the purpose of that examination? A. The first quarter of 1941 and the first quarter of 1948.

Q. During the first quarter of 1941, what cabs composed the fleet of Cab Sales? A. The fleet was composed entirely of cabs manufactured by CCM, known as Model A.

Q. What was the average age of that fleet at that time? A. Six months.

Q. What cabs composed the fleet of Cab Sales during the first quarter of 1948? A. Stock model passenger cars.

Q. Did they compose the entire fleet of Cab Sales at that time? A. The entire fleet.

Q. What was the average age of those stock cars at that time? A. Approximately six months.

Q. What was the maintenance cost for the CCM cabs in use during the first quarter of 1941? A. The cost per mile was 6.7 mills.

1427 Q. What was the cost per mile of maintenance for the stock model cars used during the first quarter of 1948? A. 23 mills.

Q. Was labor costs in 1948 higher than labor costs in 1941? A. It was.

Q. How much higher? A. One hundred per cent.

Q. Was the material cost higher in 1948 than in 1941? A. It was.

Q. How much higher? A. About 75 per cent.

Q. Using those figures, and projecting your computations on an annual basis, how much greater, during the course of one year, are the maintenance costs for stock cars as compared with the maintenance cost of CCM purpose-built cabs? A. For the year 1948, it would have cost us in excess of $575,000.

Q. That is the amount of maintenance cost for stock cars greater than the amount of the projected costs for
1428 purpose-built cabs, is that not right? A. That is correct.

Q. On cross examination, your attention was directed to some letters to or from Mr. Rank with respect to your negotiations leading to the January 3, 1948 contract between Yellow and Cab Sales. Do you recall that? A. Yes, I do.

Q. You were asked on cross examination whether those letters and memoranda refreshed your recollection in respect of certain discussions which you had with Mr. Rank at that time. Do you recollect that? A. Yes, sir.

Q. I should like to call to your attention the following sentences from Government's Exhibit 390, which is a letter from Mr. Fuller to Mr. Rank dated January 6, 1938. Mr. Rank writes in part:

"I have prepared and enclose herewith five copies of the revision of the Chicago Yellow Checker contract. You will note that I have kept this at $550 per license but have provided for the payment of $45,000 upon the signing of the contract as part of the consideration
1429 therefor. It seems to me that this is preferable to increasing the license payment to $640, not only from a tax but also from a policy point of view."

Does that reading refresh your recollection whether you had any discussions with Mr. Rank concerning the possibility of a payment to Checker of $640 per license instead of $550 per license? A. Yes.

1430 Q. And does this reading also refresh your recollection as to whether the $45,000 constituted part of the consideration for the contract of January 3, 1938? A. Yes.

Q. And was that the fact? A. That was the fact.

Q. On cross examination you also testified concerning the cabs which were operated by the drivers of the Checker fleet as distinguished from the cabs operated by Cab Sales within the Checker fleet. In connection with those driver cabs, were those cabs generally serviceable in 1937? A. I believe I testified—I am sure I testified they were unserviceable and unfit for public service.

Q. Did the question of their serviceability arise during your discussions with Mr. Rank in relation to the reduction of the number of licensed cabs? A. Yes, there was some discussion about that.

Q. Did the topic of the payment of service charges arise during discussions in 1937 between you and Mr. Rank? A. There were several mentions of that, and I admitted in our discussions that we had considerable
1431 difficulty in collecting service charges.

Q. From the drivers? A. From the drivers, that is right.

Q. As distinguishable from Cab Sales, is that not correct? A. That is correct.

Q. Mr. Sokoll, we noticed in the transcript of your cross examination, at page 1416, a sentence which did not accord with our recollection of your testimony, and I should like to clarify the record with respect to that.

At that point you were discussing the question of Fords and a statement that you made in connection with Fords, and the record reads as follows, with respect to National Transportation information, concerning the new Model A-2, and I am now quoting:

"They,"

referring to National Transportation,

"are very enthusiastic about the Model A-2, more enthusiastic about it than I ever was."

Is that a correct statement of your testimony at the
1432 previous session? A. No.

Q. What did you say? A. I said they are more enthusiastic about the Model A-2 than I ever was about the Ford.

Q. You have never used the Model A-2, have you? A. No.

Mr. LYNTON: I have nothing further.

Recross Examination.

By Mr. WILLIAMS:

Q. When you were testifying about cost per mile, what cost did you take into consideration in determining that cost per mile? A. That would take into consideration rent, light and heat, depreciation of the equipment, cost of all materials and parts, and the cost of labor.

Q. When you figured depreciation, what did you figure for resale value on the Fords? A. That wouldn't come under depreciation. Pardon me, under depreciation?

Q. Isn't it a fact that a Ford does have a resale value at the end of its service? A. Yes.

1433 Q. But you did not take that into account in these figures you testified to this morning, is that correct? A. Depreciation and maintenance do not come in the same category.

Mr. WILLIAMS: Will you read the question, please?

(Question read.)

By the WITNESS:

A. No, I would not take that into account.

By Mr. WILLIAMS:

Q. And you did not, is that correct? A. I did not, sir.

Q. Did you take any account of the lower first cost of a stock car such as a Ford?

Mr. LYNTON: If your Honor please, I object to these questions on the ground that the questions now being asked of the witness do not pertain to the question of maintenance.

The COURT: I think it is proper re-cross examination.

Mr. WILLIAMS: Will you read the question?

(Question read.)

By the WITNESS:

A. No.

1434 By Mr. WILLIAMS:

Q. Who did the repair and maintenance work on your cars in the first quarter of 1941, that is, what concern? A. TMC did part of it. Cab Sales the rest.

Q. Can you tell us what proportion that was during that year? A. No.

Q. Or during that quarter? A. No.

Q. Who did the repair and maintenance work the first quarter of 1948? A. TMC did part of it, and Cab Sales did most of it.

Q. Can you tell us about what that portion was? A. Well, the greater proportion was done by Cab Sales.

Mr. WILLIAMS: That is all.

Redirect Examination.

By Mr. LYNTON:

Q. Mr. Sokoll, I believe you testified at the last session concerning the various factors taken into consideration in forming your judgment as to the relative merits of the purpose built cabs and the stock model cars, did you not? A. I did.

Q. And during my redirect examination of you this morning I put some questions to you, concerning maintenance, is that not correct? A. That is correct.

Q. And your answers, I take it, were directed solely to the problem of maintenance, is that not right? A. That is right.

Q. The factors suggested by the Government on recross examination were not factors involved in maintenance, were they?

Mr. WILLIAMS: I object to the leading questions.

The COURT: Overruled.

By the WITNESS:

A. No, not at all.

By Mr. LYNTON:

Q. And the factors mentioned by the Government this morning were factors concerning which you testified at the previous session, were they not? A. That is right.

Mr. LYNTON: No further questions.

1436 Mr. WILLIAMS: No further questions.

The COURT: You are excused.

(Witness excused.)

By Mr. LYNTON: If the Court please, I should at this time like to offer into evidence a statement of the stockholdings, direct and indirect, of Mr. Markin in CCM. I have already shown a copy of this to the Government, and I am informed they have no objection to its introduction into evidence.

Mr. WILLIAMS: No objection.

The COURT: It is received.

(Said document, so offered and received in evidence, was marked Defendants' Exhibit 7.)

Mr. LYNTON: I also offer into evidence a statement of the stockholdings of Mr. Markin in Parmelee, direct and indirect.

Mr. WILLIAMS: No objection.

The COURT: It may be received.

(Said document, so offered and received in evidence, was marked Defendants' Exhibit 8.)

Mr. LYNTON: I should also like to read into the
1437 record a proposed stipulation to which the Government, as I am informed, agrees:

"National Transportation Co., Inc., was incorporated on May 31, 1929, under the laws of the State of New York as a sub-subsidiary of Parmelee. Prior to 1935 National became a direct subsidiary of Parmelee. During the period of 1932-1935 all of Parmelee's cab operating subsidiaries in New York City, except National became bankrupt or insolvent and ceased operations of cabs.

"National used CCM cabs ever since National's incorporation.

"In New York 11,814 taxicab licenses are outstanding. Of these National possesses 1,932."

The Government so stipulates, does it not?

Mr. WILLIAMS: That is correct, subject to check.

The COURT: The stipulation may be received.

1438 RALPH E. OAKLAND, called as a witness herein on behalf of the Defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. LYNTON:

Q. Mr. Oakland, are you First Vice-President, Treasurer and Director of CCM? A. I am.

Q. When was CCM organized? A. February 21, 1923.

Q. Shortly after its organization at that date, was there a public issue of its stock? A. There was.

Q. Through what underwriting firm was that public issue effected? A. Block, Maloney & Company.

Q. During 1928 was there another public issue of its stock? A. There was.

Q. Through what underwriting firm was that public issue effected? A. J. A. Sisto & Company.

Q. As of April 12, 1929, what was the total stock
1439 outstanding of CCM? A. 375,000 shares.

Q. As of that date, how many shares did Mr. Markin own? A. 45,157 shares.

Q. What percentage of the total was that? A. Approximately 12 percent.

Q. At that time was Mr. Markin President and General Manager of CCM? A. He was.

Q. At that time were you Vice-President and Treasurer of CCM? A. I was.

Q. Did CCM have a predecessor? A. It did.

Q. Under the laws of what State is the present CCM organized? A. Did you say "present"?

Q. That is correct. A. New Jersey.

Q. What was the name of its predecessor? A. Checker Cab Manufacturing Corporation.

Q. Was that the same name as the present name? A. It is.

1440 Q. Under the laws of what State was that predecessor organized? A. Delaware.

Q. When was it organized? A. In April, 1922.

Q. Prior to the organization of CCM of Delaware, was there a taxicab operating company in Chicago called Checker Taxi Company? A. There was.

Q. Was there any relationship between the name Checker in the Checker Taxi Company and the name Checker in Checker Cab Manufacturing Corporation?

Mr. Williams: That is objected to as calling for a conclusion?

The Court: Read the question.

(Question read.)

The Court: Overruled.

By the Witness:

A. Checker was taken from the—Checker in Checker Cab Manufacturing Corporation was taken from the name of Checker in Checker Taxi Company.

By Mr. Lynton:

Q. Were orders from drivers of Checker Taxi Com-

pany among the first orders that CCM of Delaware
1441 obtained? A. They were.

Q. During the period between 1922 and December 31, 1928, were the drivers of Checker Taxi Company customers of CCM? A. They were.

1442 Q. During that same period, was DeLuxe a customer of CCM? A. They were.

Q. During that same period, was Yellow Cab Company operating in Minneapolis a customer of CCM? A. They were.

Q. During that same period, was Pittsburgh Transportation Company, which subsequently was merged into Yellow Cab of Pittsburgh, a customer of CCM? A. They were.

Q. Did CCM also have as customers various companies and individuals operating cabs in New York City? A. Yes.

Q. I show you a photograph of a cab; does that photograph correctly represent the Model K cab produced by CCM in 1928 and 1929? A. Yes.

Q. Will you look at the reverse side of that photograph under the heading, "Specifications"? Are the specifications contained on that reverse side correct? A. They are.

1443 Mr. LYNTON: I offer this photograph and its reverse side into evidence as Defendants' Exhibit No. 9.

Mr. WILLIAMS: No objection.

The COURT: It may be received.

(Said document, so offered and received in evidence, was marked Defendants' Exhibit 9.)

The COURT: May I see that after you are through with it?

Mr. LYNTON: Yes, I am through with it.

Q. Did CCM sell many of these Model K cabs in New York City? A. It did.

Q. What was the reputation of the Model K in 1928 and 1929? A. The most outstanding—

Mr. WILLIAMS: That is objected to as calling for a conclusion. How can this witness know that?

The COURT: Sustained.

By Mr. LYNTON:

Q. During the years 1928 and 1929, did reports come to your attention concerning the Model K cab of CCM? A. They did.

1444 Q. Did those reports emanate from persons in the taxicab business in New York City? A. They did.

Q. Did they also emanate from persons engaged in taxicab operations in other parts of the United States? A. Yes, sir.

Q. What was the substance of those reports?

Mr. WILLIAMS: Objected to as hearsay.

Mr. LYNTON: I am not introducing this for the purpose of truth. I am introducing it for the purpose of showing what the reports were.

The COURT: Read the question.

(Last question read by reporter.)

By the WITNESS:

A. The substance of those reports was that the Model K was the most outstanding taxicab ever built.

By Mr. LYNTON:

Q. In 1929, did CCM commence an action against Checker? A. Yes.

1445 Q. Was that based on the 1925 contract between Checker and CCM? A. It was.

Q. Were there hearings in that litigation? A. There were.

Q. Were those hearings referred to Thomas J. Peden as Master in Chancery? A. Yes, sir.

Q. What did the Master in Chancery find with respect to the validity of that contract?

Mr. WILLIAMS: That is objected to. I suggest that he put in the special finding.

Mr. LYNTON: It is only an introduction question.

Mr. WILLIAMS: I would be glad to stipulate.

Mr. LYNTON: Will you stipulate that the Master found that the contract was valid?

Mr. WILLIAMS: If you say it is a fact.

Mr. LYNTON: Well, I do.

Mr. WILLIAMS: All right.

By Mr. LYNTON:

Q. Now, after the finding by the Master in Chancery in that suit, was the settlement agreement made between CCM and Checker? A. It was.

Q. Do you recall the date of that settlement agree-

1446 ment? A. January 5, 1930—February 5, 1930.

Q. Was Cab Sales a party to that settlement agreement? A. No.

Q. This contract is presently in evidence as Government's Exhibit 88. The signatories are for Checker Taxi

Company, Mr. Robert E. McLaughlin, its president. Was Mr. McLaughlin an employee, officer or director of CCM? A. He was not.

Q. I should like to invite to your attention the names of a number of persons then directors of Checker Taxi Company: Robert E. McLaughlin, Harry I. Gordon, R. M. Magill, Samuel Cohen, Joseph Wise, P. C. Thomas, E. W. Anderson, A. E. Kruger, J. Heslin and C. L. Crosby. Were any of those persons employed by or officers or directors of CCM? A. No.

Q. Was Mr. Max Raifman an employee, officer or director of CCM? A. No.

Q. Was Mr. Barney Mitchell an employee, officer
1447 or director of CCM? A. No.

Q. What was the origin of Cab Sales & Parts Corporation? A. Cab Sales & Parts Corporation was organized by Paul L'Amoreaux to obtain commissions on the sale of Checker taxis or cabs built by CCM to drivers of Checker Taxi Company.

Mr. Williams: I move that statement be stricken unless we have a foundation laid as to how he knows.

Mr. Lynton: Read the question and the answer.

(Last question and answer read by the reporter.)

Mr. Williams: I move the answer be stricken following the word "Paul L'Amoreaux."

Mr. Lynton: Before the court rules on that, may I ask one additional question?

The Court: You may.

By Mr. Lynton:

Q. Was that origin a matter of discussion with Mr. L'Amoreaux at that time? A. Yes.

Mr. Lynton: Do you wish to renew your motion now?

Mr. Williams: I renew the motion, and suggest
1448 you call for the conversation.

The Court: Sustained.

By Mr. Lynton:

Q. Was Mr. Paul C. L'Amoreaux an attorney at that time? A. He was.

Q. Did he act as attorney for CCM? A. He did.

Q. Did he so act in connection with the CCM-Checker suit? A. He did.

Mr. Williams: I object to the leading questions. I suggest that he try not to lead from this point on. I am not objecting to those that have gone so far.

By Mr. LYNTON:

Q. Were there discussions between Mr. L'Amoreaux and officers and directors of CCM concerning the payment of a fee to Mr. L'Amoreaux? A. There were.

Q. What were those discussions? A. Mr. L'Amoreaux—

Mr. WILLIAMS: Was Mr. Oakland present?

By Mr. LYNTON:

1449 Q. Were you present at any of those discussions? A. Yes.

Q. Will you state the discussions, please? A. Mr. L'Amoreaux advised that he and his office had spent a tremendous amount of work—

The COURT: A little louder, please.

By the WITNESS:

A. Mr. L'Amoreaux advised that he and his office had spent a tremendous amount of time and work in this suit, and that he was entitled to a very substantial fee for his services, and that he, rather than get a flat sum of money for his services, would be willing to take a commission on all the cabs sold to the drivers of Checker Taxi Company for a period of time, and that he proposed organizing a corporation which would act as sales agent for Checker Cab Manufacturing Corporation in the city of Chicago for the sale of taxicabs to drivers of Checker Taxi Company.

By Mr. LYNTON:

Q. Aside from Cab Sales & Parts Corporation, did CCM ever pay any compensation to Mr. L'Amoreaux for his services in the CCM-Checker suit? A. They did not.

1450 Q. Do you know who actually organized Cab Sales? A. I do.

Q. Who? A. Paul L'Amoreaux.

Q. When was it organized; the approximate date will suffice? A. January, 1930.

Q. On its organization, who was the stockholder of Cab Sales? A. Paul C. L'Amoreaux.

Q. Did Mr. L'Amoreaux remain a stockholder of Cab Sales during the entire year, 1930? A. He did.

Q. Was any other person a stockholder of Cab Sales in 1930? A. No.

Q. In 1931, were there any discussions concerning a purchase by Cab Sales of Stock of Checker? A. Yes.

Q. Were you present at any such discussions? A. I was.

Q. Who brought up that topic? A. Mr. L'Amoreaux.

1451 Q. What did he say? A. He said that he had been approached by officers of Checker Taxi Company to purchase a majority of the stock of Checker Taxi Company; that in view of the fact that the commissions on the sales of taxicabs were not as great as he anticipated, and because he thought Checker Taxi Company was a good business, he would like to buy its stock. He also stated that he did not have sufficient amount of money to purchase the stock, and suggested that he would be willing to sell a part of the stock for the corporation to obtain funds to purchase this stock.

Q. Who was president of Checker Taxi Company at that time? A. Bob McLaughlin.

Q. Were these conversations which Mr. L'Amoreaux reported as between himself and officers of Checker Taxi conversations with Mr. McLaughlin? A. Yes.

Mr. Williams: That is objected to unless there is some foundation laid. It does not show this witness knows anything about it.

Mr. Lynton: Yes, it does. The witness testified Mr. L'Amoreaux has mentioned that the topic was
1452 initiated by officers of Checker Taxi. I am merely trying to find who the particular officer of Checker Taxi was who initiated the conversation.

Mr. Williams: At this time, I will move the answer concerning Mr. L'Amoreaux's statement be limited to the point that the statement was made, and not given as to the truth of the statement.

Mr. Lynton: That is correct.

Q. Was stock of Checker purchased by Cab Sales in 1931? A. Yes.

Q. Do you know what proportion of the outstanding stock of Checker was so purchased? A. More than fifty per cent.

Q. Was stock of Cab Sales sold by Mr. L'Amoreaux to others in 1931?

Mr. Williams: That question is objected to unless there is some foundation laid to show that the witness knows about it.

Mr. Lynton: You will see that it is perfectly obvious.

Q. Do you know whether Mr. L'Amoreaux, at any time in 1931, sold any of the stock which he owned in Cab
1453 Sales to other persons? A. He did not.

Q. Was any stock of Cab Sales actually purchased by persons other than Mr. L'Amoreaux in 1931? A. Yes.

Q. By whom? A. Morris Markin, E. H. Miller and myself.

Q. After the purchase by you three gentlemen, how many shares of stock of Cab Sales was outstanding? A. One thousand.

Q. Of that one thousand, what was the aggregate number of shares purchased by Messrs. Markin, Miller and Oakland? A. 777.

Q. Was the balance owned by Mr. L'Amoreaux? A. Yes.

Q. Did Mr. Miller subsequently die? A. He did.

Q. When? A. In 1932.

Q. What happened to his stock holdings in Cab Sales after his death? A. They were purchased by Mr. L'Amoreaux, Mr. Markin and myself.

1454 Q. From whom? A. From the Estate of E. H. Miller.

Q. Did Mr. L'Amoreaux subsequently die? A. He did.

Q. When? A. In 1933.

Q. After his death, what happened to his stock holdings in Cab Sales? A. Mr. Markin purchased them from his estate.

1455 Q. Mr. Oakland, did you personally participate in any of the discussions leading to the organization of Parmelee in 1929? A. No.

Q. Do you know who composed the Board of Directors of CCM during the period January through April 1929? A. Yes.

Q. Who? A. Morris Markin, Henry Weiss, Jack Polansky, Meyer Halff, Francis Adams—not Francis. I don't know his first name.

Q. Graham? A. Graham Adams. Frank Haveron, Jacques Moos, Nicholas Ludington; Gillespie.

Q. I think you have named all nine. Of these members of the Board of Directors, who was Mr. Adams? A. He was a partner of J. A. Sisto & Company.

Q. Who was Mr. Haveron? A. He was a partner of J. A. Sisto & Company.

Q. Who was Mr. Gillespie? A. Well, Mr. Gillespie had offices in the same office as J. A. Sisto & Company, but I don't know whether he was an employee or not.

1456 Q. Who was Mr. Moos? A. Mr. Moos was an investor.

Q. Did he had any relationship to J. A. Sisto & Company of which you knew? A. Yes, J. A. Sisto & Company suggested his name as a member of the Board.

Q. Who was Mr. Ludington? A. He was also an investor.

Q. Who was Mr. Halff? A. Meyer Halff was attorney for Block, Maloney & Company.

Q. Is that the same Block, Maloney & Company who in 1923 effected a public issue of stock of CCM? A. Yes.

Q. Who was Mr. Weiss? A. Mr. Weiss was a large stockholder in Checker Cab Manufacturing Corporation, and President of Checker Cab Sales Corporation.

Q. Who was Mr. Polansky? A. Mr. Polansky was a large stockholder of Checker Cab Manufacturing Corporation and President of Fisk Discount Corporation.

Q. I believe you testified that in 1929 you were Vice-President and Treasurer of CCM, is that not
1457 right? A. That is right.

Q. Did any discussion concerning the legal method of the organization of Parmelee come to your attention before April 12, 1929? A. No.

Q. Or concerning Transportation Management Corporation? A. No.

Q. Or concerning any of the other companies which eventually became related to Parmelee? A. No.

Q. I should like to bring you to the month of September, 1930. In that month did CCM still own 10,000 shares of preferred stock of Parmelee? A. It did.

Q. Was the par value of that stock one million dollars? A. Yes.

Q. Did CCM in September, 1930, own any debentures of Parmelee? A. Yes.

Q. What was the principal amount? A. $1,442,000.

1458 Q. Did CCM in September, 1930, own any common shares of Parmelee? A. Yes.

Q. How many? A. 23,000 shares.

Q. Did CCM in September, 1930, own any warrants to purchase common shares of Parmelee? A. Yes.

Q. How many? A. 92,245 warrants.

Q. With the exception of the one million dollars of par value of preferred stock, from whom did CCM acquire the balance of these Parmelee securities? A. J. A. Sisto & Company.

Q. About when did it so acquire those securities from J. A. Sisto & Company? A. I believe it was July, 1930.

Q. Was J. A. Sisto & Company in financial difficulties at that time? A. They were.

Q. Had J. A. Sisto & Company come into financial difficulties following the stock market crash of October
1459 1929? A. They did.

Q. During 1930 did you participate in any discussions with a group represented by Mr. Raskob? A. Yes.

Q. Who was the group which Mr. Raskob represented at that time? A. He represented himself and Pierre du Pont and some other du Pont interests whose name I do not know.

Q. Mr. Oakland, I am referring to a special meeting of stockholders of CCM held September 25, 1930. There is mentioned in that meeting a number of the stockholders, and I should like to direct your attention to the names of some of them.

Laird, Bissell & Meads, 86,775 shares.

Do you know who Laird, Bissell & Meads were at that time? A. Yes.

Q. Who? A. They were a stock brokerage house in Wilmington, Delaware.

Q. Whom did they represent? A. Two du Pont widows. I don't know which two they were.

1460 Q. Were they part of the group whom Mr. Raskob represented at that time? A. They were.

Q. John J. Raskob, 19,709 shares. Is that the Mr. Raskob whom you have mentioned? A. Yes.

Q. Dyer-Hudson & Company, 12,500 shares. Who was Dyer-Hudson & Company? A. A brokerage house in New York City.

Q. Whom did they represent? A. John J. Raskob.

Mr. LYNTON: May I say for the purpose of the record that the shares which I have just mentioned aggregate 118,900 shares.

Q. In addition to the specific stockholdings to which I have referred, were there any other stockholdings that the Raskob—du Pont group may have had? A. They may have had, yes.

Mr. LYNTON: May I also state for the record that the aggregate number of shares represented at the meeting of September 25, 1930, was 250,839, and these references are from Government's Exhibit 64.

1461 Q. Mr. Oakland, Defendants' Exhibit 7 shows that in September, 1930, Mr. Markin's stockholdings, direct and indirect, were 19,581 shares. Is that correct to the best of your recollection? A. It is.

Q. Had Mr. Raskob during the year 1930 and prior to September, 1930, sent any representatives to the offices of CCM? A. Yes.

Q. Who? A. Robert R. Young and Charles D. Hartman, Jr.

Q. And did those representatives come to the offices of CCM frequently during that period? A. Yes.

Q. What did they do at the offices of CCM? A. They examined statistics of Checker Cab Manufacturing Corporation.

Q. And did they do that with the frequency of their visits? A. Yes.

Q. Did they discuss the affairs of CCM with you? A. Yes.

Q. And with others? A. Yes.

Q. Did that occur for a period of months before
1462 September, 1930? A. Yes.

Q. Did a time come in 1930 when Mr. Raskob or a representative mentioned the stock owned by Mr. Markin in Motor Cab Transportation Corporation? A. Yes.

Q. About when? A. I would say it was about May or June, 1930.

Q. Were there a series of discussions concerning that topic? A. There were.

Q. Did you participate in those discussions? A. I did.

Q. Who else participated in them? A. I believe Mr. Pierre du Pont was at one, and Young and Hartman were at a number of them.

Q. And Mr. Raskob himself? A. And Mr. Raskob himself, and Mr. Markin and me.

Q. Were there a number of such discussions? A. Yes.

Q. Will you state the substance of the discussions at which you were present? A. Mr. Raskob advised
1463 Mr. Markin that he thought it would be better for all concerned for him to dispose of his holdings in Motor Cab Transportation, and suggested that he sell those holdings to Checker Cab Manufacturing Corporation.

Mr. Markin advised—No. He suggested to Mr. Markin he sell them to Parmelee Transportation Company, and Mr. Markin advised that he did not believe that Parmelee was financially able to purchase this company, and that he was unwilling to take common stock for his holdings.

So, after many discussions and examining of the figures, Mr. Raskob suggested that Mr. Markin get in touch with Mr. Ernest Miller and see how many shares of Parmelee stock Parmelee would give for the stock of Motor Cab, and that Mr. Raskob would be willing to give Mr. Markin

stock in Checker Cab Manufacturing Corporation if they in turn could get stock in Parmelee for the same Motor Cab stock.

Q. Is that the substance of those discussions? A. That was the substance of the discussions until the final one which resulted in the contract.

Q. And as the result of those discussions a
1464 contract was made? A. It was.

Q. And was the stock of Motor Cab Transportation Corporation then owned by Mr. Martin transferred to CCM? A. Yes.

Q. What did Mr. Markin receive for his Motor Cab stock? A. 58,437 shares of Checker Cab Manufacturing Corporation.

Q. After that transfer, were there securities transferred by CCM to Parmelee? A. Yes.

Q. What securities were so transferred? A. All of the stock of Motor Cab; 1,442,000 in par value debentures, $1,000,000 of preferred stock and warrants to purchase 92,245 common shares of Parmelee.

Q. How did the transfer of Parmelee debentures, the Parmelee preferred shares and Parmelee warrants then owned by CCM come about?

Mr. Williams: This is objected to as calling for a conclusion of the witness. Let us have what was done and what was said.

1465 The Court: Read the question.

(Question read.)

The Court: You may answer.

By the Witness:

A. In the negotiations between Mr. Markin and Mr. Miller regarding the sale of Motor Cab to Parmelee, Mr. Miller suggested that as long as Parmelee had this preferred stock and the large amount of debentures, that they also put that in the same deal.

By Mr. Lynton:

Q. Did Mr. Miller state why he would like them in the same deal? A. Yes, because he did not—he wanted to reduce the obligations of the corporation to pay interest on the debentures and dividends on the preferred stock.

Q. And by the corporation, you refer to Parmelee, do you not? A. Parmelee, yes.

Q. In September, 1930, how many cabs were operated by Motor Cab Transportation Corporation's subsidiaries? A. 2,050.

1466 Q. What were those subsidiaries? A. Black Beauty, MCT Co. Inc., and Hamilton-Peters operating company.

Q. Where were those operations taking place? A. In New York City.

Q. At that time was Yellow Taxi Corporation, New York, operating taxicabs in New York City? A. They were.

Q. At that time was the majority of the stock of Yellow Taxi Corporation, New York, owned by Parmelee? A. Yes.

Q. When was Black Beauty formed? A. January 31, 1929.

Q. Was Mr. Markin the sole stockholder of Motor Cab Transportation Corporation, the holding company? A. Yes.

Q. Do you know Mr. Herman Fleur? A. Yes.

Q. Who was he? A. He was a cab operator in the City of New York.

Q. Was he connected with Black Beauty at that time? A. Yes.

1467 Q. Had Mr. Herman Fleur been a taxicab operator in New York City before 1929? A. Yes.

Q. As such had he purchased cabs from CCM before 1929? A. He had.

Q. Did these cab operating subsidiaries of Motor Cab Transportation purchase CCM cabs? A. Yes.

Q. Who was Mr. S. Katz? A. Sam Katz was also a New York taxicab operator.

Q. Was he connected in 1929 and 1930 in the MCT Co. Inc.? A. Yes.

Q. Had he been a taxicab operator in New York City before 1929? A. Yes.

Q. As such had he purchased CCM cabs before 1929? A. Yes.

Q. Was there a Mr. Hamilton? A. Yes.

Q. Was there a Mr. Peters? A. Yes.

Q. Were both of those men taxicab operators con-
1468 nected with Hamilton Peters Company? A. Yes.

Q. Were they operating in New York City? A. Yes.

Q. Had they been taxicab operators in New York City before 1929? A. Yes.

Q. As such had they bought CCM cabs before 1929? A. Yes.

Q. I should now like to direct your attention to DeLuxe Motor Cab Company. Was the stock of DeLuxe acquired by Mr. Markin before 1929? A. Yes.

Q. When? A. 1927.

Q. What were the circumstances under which in 1927 Mr. Markin acquired the stock of DeLuxe? A. He acquired all the stock of DeLuxe on the assumption of certain of their liabilities.

Q. To whom were those liabilities owing? A. Commercial Credit Company.

Q. And what was the nature of those liabilities? A. Notes on which there was a chattel mortgage on taxicabs.

1469 Q. Did those notes represent moneys owing for purchase payments on taxicabs? A. Yes.

Q. Before 1927 did DeLuxe buy taxicabs from CCM? A. Yes.

Q. Before 1930 did it buy taxicabs from CCM? A. Yes.

Q. In 1930 was the stock of DeLuxe acquired by Parmelee? A. Yes.

Q. After the Parmelee acquisition were there any sales of cabs from CCM to DeLuxe? A. Yes.

Q. How many cabs were sold? A. Two.

Q. Were there any cabs ever sold by CCM to Chicago Cab? A. No.

Q. I should like now to direct your attention to the summer of 1933. At that time did Messrs. Laird, Bissell & Meads continue to represent certain du Pont interests in stock of CCM? A. Yes.

1470 Q. And was the firm of Laird, Bissell & Meads also known as Laird & Company? A. Yes.

Mr. Lynton: I offer it into evidence the minutes of the annual meeting of the board of directors of CCM on July 27, 1933.

Mr. Williams: No objection.

The Court: It may be received.

(Said document, so offered and received in evidence, was marked Defendants' Exhibit 10.)

The Court: I am sorry, I have to recess at this time. There is a meeting of the judges. We are going to recess until 1:30. Before recessing, I want to advise counsel, on Friday, the 11th, this week, Friday, there is a judicial conference of all the judges of the Seventh Circuit. It is an all-day session, and we will have to recess for that day, so I thought I would advise you so that you could make your plans.

The court stands recessed in this case until 2 o'clock.

(Thereupon a recess was taken until 2 o'clock p. m. of the same day, June 7, 1948.)

1471 No. 46 C 1339

UNITED STATES OF AMERICA, PLAINTIFF,

vs.

YELLOW CAB COMPANY, *et al.*, DEFENDANTS.

Before Judge LaBuy
Monday, June 7, 1948,
2 o'clock p. m.

Court met pursuant to recess.

Present:

Mr. Hotchkiss
Mr. Williams
Mr. Lynton
Mr. Ginsberg
Mr. Fuller
Mr. Climenko

RALPH E. OAKLAND, a witness on behalf of the defendants, resumed the stand and testified as follows:

Direct Examination (Continued).

By Mr. LYNTON:

Q. At the close of this morning's session, Defendants' Exhibit 10 was received in evidence. That exhibit was a photostatic copy of the minutes of the annual meeting of the board of directors of CCM held July 27, 1933. Those
1472 minutes show, Mr. Oakland, the following persons to be directors of CCM: Morris Markin, Ralph E. Oakland, Clarence A. Weymouth, J. Morton Baxter, Harry P. Barrand, J. A. King and G. Ray Kaiser. Were those seven directors of CCM at the date of this meeting? A. Yes.

Q. Morris Markin, to whom I have referred, is a defendant in this action, is he not? A. He is.

Q. You are the Ralph E. Oakland mentioned in these minutes, are you not? A. I am.

Q. Who is Mr. J. A. King? A. He is vice president of Checker Cab Manufacturing Corporation.

Q. I shall now mention to you the names of the remaining four of the seven directors; Mr. Clarence A. Weymouth, who was he? A. He was the father of George Weymouth, who was connected with Laird & Company.

Q. Was Mr. Clarence A. Weymouth suggested by Laird & Company as a director of CCM? A. Yes.

1473 Q. Who was J. Morton Baxter? A. I don't know other than he was suggested as a director by Laird & Company.

Q. Who was Harry P. Barrand? A. He was also suggested as a director by Laird & Company.

Q. Who was G. Roy Kaiser? A. He was also suggested as a director by Laird & Company.

Q. Laird & Company, at the time of this meeting, represented certain du Pont interests, did it not? A. That is right.

Mr. LYNTON: I should like briefly to invite the attention of the court to a few portions of Exhibit 10. The first resolution adopted at that meeting, Mr. Markin not voting, appoints an executive committee to consist of Mr. Markin, C. A. Weymouth and Harry P. Barrand, of which executive committee, Mr. Harry P. Barrand is appointed chairman. And I call to the court's attention that Messrs. Weymouth and Barrand, two of the three members of the executive committee, were, as Mr. Oakland had testified, suggested by Laird & Company.

1474 Second, I invite to the court's attention a resolution which was adopted, Messrs. Markin, King and Oakland not voting, authorizing 141,639 shares of a par value of $5 each of this corporation be issued for such consideration not less than $5 per share as may be appropriate.

And it is further resolved that the executive committee is authorized to negotiate for the sale of these shares.

I further invite to the court's attention resolutions which elect Mr. C. A. Weymouth, First Vice President, to elect Mr. Harry P. Barrand assistant treasurer, and which, referring to certain bank accounts, provided for a counter-signature by either Mr. Barrand or Mr. Weymouth, both of whom were suggested by Laird & Company.

I now offer in evidence a photostatic copy of the minutes of August 1, 1933 of the executive committee of the board of directors of CCM as Defendants' Exhibit 11.

Mr. WILLIAMS: No objection.

The COURT: It may be received.

(Said document, so offered and received in evidence, was marked Defendants' Exhibit 11.)

1475 Mr. LYNTON: In connection with Defendants' Exhibit 11, I invite to the court's attention that at this meeting of the executive committee, only two persons were present, Mr. Clarence A. Weymouth and Mr. Harry P. Barrand, both of whom were suggested by Laird & Company. Mr. Barrand acted as chairman of the executive committee. These minutes read in part:

"The chairman then suggested that he had received the following telegram from Mr. Morris Markin."

This is the telegram:

"Unable to attend executive committee meeting this afternoon, very much surprised meeting called so suddenly when you knew I was in Chicago stop. Protest against issuance of any stock or making of any payment for sale of stock without prior approval of board of directors stop. Executive committee has no power to issue stock in any of them stop. Please present this telegram to the executive committee so that it becomes a part of the record. Signed Morris Markin."

1476 I further invite to the attention of the court notice of a meeting which is in the form of a telegram signed by Mr. Barrand as Chairman of the executive committee sent July 31, 1933 at 4:32 p. m. The meeting was held the next day at 5 o'clock p. m.

I offer into evidence photostatic copy of minutes of a special meeting of board of directors of CCM held August 14, 1933 as Defendants' Exhibit 12.

Mr. WILLIAMS: No objection.

The COURT: It may be received.

(Said document, so offered and received in evidence, was marked Defendants' Exhibit 12.)

Mr. LYNTON: At this meeting, the following persons were present, constituting a majority of the directors: Messrs. C. A. Weymouth, Harry P. Barrand, Morris Markin, Ralph E. Oakland, James A. King, and also present were Mr. George Weymouth of Laird & Company and Mr. E. W. Devevoise of Devevoise & Stephenson, Mr. C. P. G. Fuller of Chadborn, Hunt, Jackel & Brown, Mr. G. Campbell Beckett of counsel for Mr. George Weymouth and a

1477 stenographer.

At this meeting, Mr. G. Ray Kaiser resigned as director and Mr. Raymond S. Pruitt was elected in his stead. Mr. J. Morton Baxter resigned as first vice president and director, and Mr. Lucius B. Manning was elected a director in his stead. Mr. C. A. Weymouth resigned as a director and president and Mr. W. H. Beal was elected a director in Mr. Weymouth's stead. Mr. Morris Markin was elected president and Mr. Ralph E. Oakland first vice president in the place of Messrs. Weymouth and Baxter. Mr. Harry P. Barrand resigned as secretary-treasurer, chairman of the board and chairman of the executive committee.

The executive committee then in office was discharged and a new executive committee was appointed consisting of Mr. Markin, Mr. Manning and Mr. Beal.

By Mr. Lynton:

Q. Mr. Oakland, were Messrs. Manning and Beal suggested by the Cord Corporation? A. They were.

1478 Mr. Lynton: By resolution adopted at this meeting, the previous resolutions to which I shall refer, adopted at the previous meeting of August 2d, 12 days earlier, were cancelled and rescinded. Among those resolutions was a resolution authorizing the additional issue of 141,637 shares of common stock. Rescinded were the resolutions electing Messrs. Weymouth, Baxter and Barrand officers, and providing for payment of salary to them. Rescinded also were the resolutions of the executive committee authorizing additional issuance of stock previously mentioned, and the bank resolutions were changed so as to provide the countersignatures of Messrs. Manning and David Weir.

By Mr. Lynton:

Q. Who was David Weir? A. He was connected with the Cord Corporation.

Mr. Lynton: Finally, Mr. E. L. Cord was elected a director in the place of Mr. King, and Mr. E. L. Cord was also elected chairman of the board of directors of CCM.

1479 Q. During August, 1933, was CCM indebted on a bank loan? A. They were.

Q. In what amount? A. I think it was $280,000.

Q. Was that bank indebtedness paid shortly after August 2, 1933? A. It was.

Q. Can you fix the time approximately when that bank loan was paid? A. It was sometime between the dates of August 2 and August 14.

Q. Where did CCM obtain the funds to pay that bank loan? A. From Cord Corporation.

Q. Who was Mr. Pruitt? A. Secretary and counsel for the Cord Corporation.

Q. Who was Mr. Lucius B. Manning? A. Vice-Chairman of the Board of Cord Corporation.

Q. Who was Mr. W. H. Beal? A. He was a Director of Cord Corporation

1480 Q. Who was Mr. E. L. Cord? A. Chairman of the Board of the Cord Corporation.

Q. Mr. Oakland, has CCM always built a purpose built cab? A. They have.

Q. What is a purpose built cab? A. A purpose built cab is a cab which has the characteristics which Checker Cab Manufacturing Corporation think are necessary and desirable in the operation of taxicabs.

Q. What are those characteristics? A. The first characteristic is in the design of a limousine automobile to give the passenger a feeling of riding in a chauffeur driven private car. It has safety features for the safety of the driver and passengers, and a heavy duty frame, a crash pad at the rear of the driver's compartment, finger guards in the door, tell tale light which shows when the doors are open, a back-up buzzer which notifies any pedestrians which may be in the rear of the taxicab that the car is about to back up.

It has the engineering of the fast wearing parts so that they are easily accessible for the quick maintenance
1481 of the car, and also builds extra mileage in the fast wearing parts.

Q. Would you mention some of those fast wearing parts? A. The brake and brake lining, clutch and clutch lining, transmission, differential.

Q. Are there other safety features in connection with the construction of the purpose built cab? A. Yes. The passenger compartment is so designed so that there will be a minimum of points protruding either on the floor or the sides of the passenger compartment so that passengers cannot be injured, or at least will attempt to prevent the injury of passengers.

Q. Are any of the parts of the frame given more weight than in the usual pleasure car? A. Yes, the whole frame is built heavier than in the average passenger car.

Q. Are there any features in the purpose built cab for the benefit of the driver? A. Yes.

Q. What are they? A. Probably the most important is the construction of the seat. The seat is adjustable
1482 in 27 different positions so as to take care of drivers of different height, different weight and different physical proportions.

Q. Is there a separation in the interior of the purpose built cab between the driver and the passengers? A. There is.

Q. How many passengers is the purpose built cab manufactured to carry in the rear of the cab behind the partition? A. Five passengers.

Q. And how is the space in the front of the partition allocated? A. There is a space for one driver and no space for anything else, or for any other passenger.

Q. Mr. Oakland, I show you a statement of taxicabs manufactured and sold by CCM, which is subdivided as

to the period 1923 through 1928, and the period since January 1, 1929, through December 31, 1947.

Is that a correct statement? A. It is.

Mr. LYNTON: I offer it into evidence.

Mr. WILLIAMS: No objection.

1483 The COURT: It may be received.

(Said document, so offered and received in evidence, was marked Defendants' Exhibit 13.)

Mr. LYNTON: With permission of the Court I would like to read this statement:

"TAXICABS MANUFACTURED AND SOLD BY CCM

"A. During period 1923 through 1928—8,019.

"B. During period January 1, 1929 through December 31, 1947, 29,260, of which

"(a) 16,996 were sold to Yellow of Chicago, National Transportation Co. Inc., Yellow of New York, subsidiaries of Motor Cab Transportation, Yellow of Pittsburgh (including Pittsburgh Transportation Company). Yellow of Minneapolis, Cab Sales-Checker-drivers of Checker, and DeLuxe-drivers of DeLuxe, and

"(b) 12,264 were sold to persons, firms or corporations having no relation whatever to any of the foregoing."

Q. Mr. Oakland, what is your estimate of the
1484 number of cabs operating in the United States today, both licensed and unlicensed? A. 85,000.

Mr. LYNTON: I offer into evidence a pamphlet prepared by Cab Research Bureau Inc., entitled Taxicab Licenses and Rates as of April 1, 1947, which shows the cities of over 50,000 population, and shows the licensed cabs in those cities and the license rates.

May that be received subject to correction?

Mr. WILLIAMS: No objection.

The COURT: It may be received.

(Said document, so offered and received in evidence, was marked Defendants' Exhibit 14.)

Mr. LYNTON: May I invite the attention of the Court to this pamphlet and state for the record that as a matter of arithmetic 58,204 licenses exist in 199 enumerated cities shown by that pamphlet, and that the rates in Chicago are about the lowest of any city shown.

The COURT: Where is that shown?

Mr. LYNTON: Right after that index, your Honor,

1485 which is the population figure. You have each of the cities enumerated, with the population, the number of licenses and the rates.

The Court: Is this the rate for what period?

Mr. Lynton: That is the rate in effect as of the date of the pamphlet, April 1, 1947.

The Court: Is Chicago's rate lower than New York's?

Mr. Lynton: I think so, sir. You will notice the differences—

The Court: 20 cents for the first quarter of a mile. Here it is 20 cents for the first third of a mile.

Mr. Lynton: Yes, but you will notice the New York rate is by quarters from there after.

The Court: Yes.

Mr. Lynton: You will find Chicago and New York are, together, among the lowest of all.

The Court: New York is 5 cents each one-quarter mile, and five cents each two minutes waiting time.

Chicago is 20 cents for the first third mile and 10 cents each two-thirds mile, 5 cents each for additional
1486 passengers over one, and 10 cents each three minutes waiting time.

Mr. Lynton: That is right.

Now, you will find that those two cities, New York and Chicago, are, together, substantially lower than the majority of the cities indicated there, and those cities include all cities of a population of 50,000 or more.

Q. Mr. Oakland, does taxicab regulation by municipalities prevail through most of the large cities of the United States today?

Mr. Williams: It is objected to as immaterial. It is getting quite far afield when we get into other cities—

The Court: There is some evidence of an ordinance here in Chicago on the question of the number of cars.

Mr. Lynton: Yes.

The Court: He may answer.

By the Witness:

A. Yes.

By Mr. Lynton:

Q. In most of these large cities are cab operations operated through fleet or individual operator opera-
1487 tions? A. The majority, through fleets.

Q. In the case of where the operations are conducted through fleets are a large proportion of the licenses held by one or two operating companies? A. Yes.

Q. Where cabs of a manufacture other than CCM are used, by whom are those cabs generally manufactured? A. General Motors, Chrysler, Ford, Packard.

Q. And as a matter of general usage, practice, of replacement of cabs by fleets in the United States, are the automobiles produced by a manufacturer generally taken in replacement of cabs? A. I don't understand the question.

Q. Let me phrase it differently.

Mr. WILLIAMS: It is objected to. There is no proper foundation for this question. How does Mr. Oakland know that?

Mr. LYNTON: As a matter of his own experience. He has been in the manufacture of taxicabs for quite a long time.

Mr. WILLIAMS: He hasn't been in business in all these cities.

1488 Mr. LYNTON: No, but those questions would come to his attention.

Mr. WILLIAMS: I object.

The COURT: Overruled.

Mr. LYNTON: Will you read the question? Perhaps the witness can answer the question as it has been put.

(Question read.)

By the WITNESS:

A. Yes.

By Mr. LYNTON:

Q. And by that I meant to convey the question whether, in the case of a fleet, for example, which had purchased Fords, as a matter of custom and usage, practice, that fleet owner normally would replace his fleet with Fords? A. That is right.

Q. Has CCM any exclusive contracts with any operating companies to sell them cabs? A. No.

Q. Has CCM ever had a contract for exclusive purchases by Yellow? A. Yes.

Q. Has CCM ever had a contract for exclusive
1489 purchases by the former Yellow of New York? A. No.

Q. Or by the present Yellow of Pittsburgh? A. No, sir.

Q. Or by the present Yellow of Minneapolis? A. No.

Q. CCM did have an exclusive contract with Checker for five years in 1925, didn't it? A. Yes.

Q. And it also had a second exclusive contract or substitute contract covering the period 1930 to 1935, did it not? A. Yes.

Q. Does CCM have an exclusive contract with Checker or Cab Sales today? A. No.

Q. With respect to such sales or purchase contracts as are made between CCM and Yellow or the cab operating subsidiaries of Parmelee—and I use that latter phrase loosely—are those sales or purchase contracts for a limited number of cabs? A. They are.

Q. And are they with specified delivery dates? A. They are.

1490 Q. And do they contain specifications as to the manufacturer of the cabs? A. They do.

Q. Have you acted as an assistant to Mr. Markin in his capacity as management adviser to Parmelee? A. I have.

Q. When did you start so to act? A. I can't fix the date exactly but sometime in the middle thirties, I would say.

Q. And in what manner do you assist him? A. I examine the statistics of the various companies, operating statistics, and advise him as to any thoughts I may have.

Q. When you so act, do you act in the capacity of an officer, director or employee of CCM? A. I do not.

Q. Who is Mr. J. L. Heuser? A. He also works for Mr. Markin as adviser in his work as management adviser to Parmelee Transportation Company.

Q. Do you mean to say that Mr. Heuser acted as an assistant to Mr. Markin in that capacity? A. Yes, sir.

Q. And approximately how long has Mr. Heuser
1491 acted in that capacity of assistant to Mr. Markin? A. I would say four or five years.

Mr. LYNTON: You may examine.

Cross Examination.

By Mr. WILLIAMS:

Q. I believe you testified that Checker drivers were customers of CCM prior to December, 1928. Do you know whether all of the drivers at that time bought from CCM or only part of them? A. Do I know?

Q. Yes. A. Yes, I know.

Q. Will you tell us what the facts are? A. I know that the majority of the taxicabs purchased by the drivers, were purchased other than those manufactured by CCM.

Q. What about the drivers of DeLuxe prior to the time that any stock was acquired by Mr. Markin? Did they also buy other cabs than CCM cabs? A. The drivers of DeLuxe did not purchase any taxicabs prior to 1927. The company purchased them.

1492 Q. Do you know whether the company purchased cabs other than from CCM? A. Yes, they did.

Q. Do you know the proportion in that case of CCM to non-CCM cabs? A. My belief is it was about the same.

Q. What about Yellow of Minneapolis, do you know whether it purchased all of its cabs from CCM prior to the time that ownership was acquired by Parmelee?

Mr. LYNTON: Just a moment. I think there is a little confusion. I was referring to the Yellow Cab Company which conducted operations in Minneapolis. It is not the Yellow Cab of Minneapolis to which you refer.

Mr. WILLIAMS: My question applies to the Yellow Cab Company concerning which you testified?

A. It purchased cabs from other than CCM.

Q. Do you know anything about the proportions there of CCM to non-CCM cabs? A. I would say they purchased at least as many from CCM as they did from others.

Q. What are similar facts concerning the Pittsburgh companies that were acquired by Parmelee? A.
1493 I believe that the majority were other than CCM.

Q. Can you tell us similar facts concerning the companies operated by Mr. Hamilton in New York that you testified concerning? A. I would say there were more cabs purchased of CCM than others by Mr. Hamilton.

Q. What about Mr. Peters? A. And Mr. Peters.

Q. And you mentioned Mr. Katz? A. Yes.

Q. What is the situation with respect to his company? A. I would say more CCM than other than CCM.

Q. Was it Mr. Fleur you mentioned? A. Yes.

Q. What are the facts with respect to his company? A. I would say more CCM than other than CCM.

Q. I believe you testified that Mr. L'Amoreaux in a conversation stated that he was approached by Checker desiring to sell some of its stock to him. Do you have any knowledge of that transaction as to whether he
1494 was approached apart from what he told you? A. Yes.

Q. Tell us what is that knowledge; how did you have it? A. Mr. McLaughlin also told me and Mr. Harry Gordon also told me that they had approached Mr. L'Amoreaux.

Q. When did they tell you that? A. During the negotiations prior to the purchase of the stock.

Q. Were you present at those negotiations? A. I was present at some of the meetings.

Q. In what capacity were you present? A. Mr. L'Amoreaux had asked Mr. Markin to purchase some stock in Cab Sales so as to obtain a sufficient amount of money to purchase the stock, and Mr. Markin requested that I attend the conference with him.

Q. How were you paid for attending that conference, by CCM or Mr. Markin?

Mr. LYNTON: I object to that. It assumes facts not in evidence. It assumes he was paid.

By Mr. WILLIAMS:

Q. Did you receive a salary on that day?

Mr. LYNTON: I object to the form of the question,
1495 because I think you are now trying to draw an implication that is not in the testimony.

The COURT: He may answer.

By the WITNESS:

A. The conference was not held during business hours. It was held in the evening.

By Mr. WILLIAMS:

Q. Who paid a salary to you at that time? A. Checker Cab Manufacturing Company.

Q. Did Mr. Markin pay you any salary at that time? A. Yes.

Q. What was it paid for, in what capacity? A. As advisor to him.

Q. Was that a separate salary from the one from Checker Cab Manufacturing? A. It was.

Q. Would you tell us how much it was per year? A. It was on a percentage basis.

Q. A percentage of what? A. A percentage of his total earnings exclusive of his salary.

Q. What was that percentage?

Mr. LYNTON: If your Honor please, I do not think it is necessary to have him recite that.

1496 The COURT: I do not think it is necessary. I sustain the objection.

By Mr. WILLIAMS:

Q. Now, you testified CCM sold two cabs to DeLuxe while it was owned by Parmelee. Were those sales made to drivers of DeLuxe or to DeLuxe itself? A. To the company itself.

Q. Do you know whether the drivers bought any cabs from anyone other than CCM during that period? A. May I have that question again?

(Last question read by the reporter.)

The WITNESS: May I ask what period?

By Mr. WILLIAMS:

Q. The period that DeLuxe was owned by Parmelee. A. No, they did not.

Q. During the period that you testified that Mr. Raskob and some of the DuPont interests owned stock in CCM, what was the position of Mr. Markin? A. He was president and general manager except for a period of fourteen days.

Q. Is that the period following August 2d? A. It is.

Q. Now, you described a purpose-built cab. Are you referring to the current Model A-2 in giving that
1497 description? A. I am referring to all of the taxicabs that were ever manufactured by Checker Cab Manufacturing Corporation with the exception of some of the later additions that were not on earlier models.

Q. What were those later additions which were not on the earlier models? A. Well, I think the back-up signal was introduced in the early thirties. I think the finger-guard was introduced in the early thirties. That is all I can remember at the moment.

Q. Has CCM undergone any change in its views since 1929 concerning what ought to go into a purpose-built cab, or what a purpose-built cab was? A. Nothing other than what they may have learned from experience.

Q. As a matter of fact, the present cabs are much lighter than the old cabs, are they not? A. Yes.

Q. Is there any other cab other than CCM that will carry five passengers in the compartment behind the driver? A. Yes.

Q. Will you name them, please? A. DeSoto and
1498 Packard.

Q. Do you know whether cabs carry five passengers very often? A. Yes.

Q. Will you tell us whether they do or whether they do not, what the answer is? A. I can tell you that the average number of passengers carried is somewhat less than 2, although there are many occasions that 5 are carried.

Q. How much less than two is the average, do you know? A. That would vary between cities. I would say 1½ would be the minimum.

Q. Do you know what the figure is for Chicago?

Mr. LYNTON: Just a moment. I think the witness did not finish his answer.

The COURT: Did you finish your answer?

The WITNESS: Yes.

By Mr. WILLIAMS:

Q. Do you know what the figure is for Chicago, the average number of passengers carried? A. It is around 1½.

Q. Now, what information or what knowledge did you base your statement on concerning the replace-
1499 ment policy of taxicab operators generally, that they usually bought from the same manufacturer, as I understood it? A. From reports we get from the salesmen we have.

Q. How wide an area do your salesmen cover? A. They cover the entire United States.

Q. Do they try to call on every taxi company in all the cities listed in this Defendants' Exhibit, I believe it is 14, which was prepared by the Taxicab Institute, or do you know? A. I believe since 1923 we have had such a sales representative call on everyone of those cities.

Q. What about since 1945? A. Since 1945, we have had no sales organization other than in New York City and at the factory.

Q. When did you last have a nationwide sales organization? A. In the early thirties.

Q. Can you give us about the approximate year? A. Probably 1933.

Q. Following 1933, did your salesman contact, or was it a part of their duties to contact other cities, that is, taxi-
cab operators in other cities than Chicago, New
1500 York, Pittsburgh and Minneapolis? A. Since 1933?

Q. Yes. A. Since 1933, most of their contact has been by letters, although they have occasionally made personal solicitations.

Q. Do you maintain any sales office—what sales offices have you maintained since 1933? A. One in Kalamazoo and one in New York City.

Q. I believe you stated that Yellow in Chicago had no contract to buy cabs exclusively from CCM, is that correct? A. That is correct.

Q. I take it you are referring to a written contract, are you? A. I am referring to any kind of a contract.

Q. That is, you are speaking of your own knowledge? A. Yes, sir.

Q. Have you been paid by Mr. Markin on a percentage basis since the early thirties, I believe you said, when you first took over that job?

Mr. LYNTON: You mean for personal services? I object to the question because I am not certain as to whether the question is addressed to compensation received for his duties as an officer—

1501. The COURT: Rephrase the question to specify that.

By Mr. WILLIAMS:

Q. You have received a salary from CCM continuously since the early thirties, have you not? A. I have.

Q. Have you also received payments from Mr. Markin for services as an advisor that you testified about? A. Yes.

Q. Has that been on a percentage basis during that period? A. It has.

Q. Continuously up to the present time? A. No.

Q. When did the change occur? A. I believe in 1934.

Q. What has been the arrangement since 1934? A. I have received no compensation from him.

Q. Have you performed any work as an advisor to Mr. Markin? A. I have.

Q. Have you performed any of that work during regular business hours? A. I have.

1502 Mr. WILLIAMS: That is all.

Redirect Examination.

By Mr. LYNTON:

Q. Mr. Oakland, you referred to the cabs presently manufactured by DeSoto and Packard. With respect to the DeSoto cabs, who is the selling agency for Chrysler and the taxicab operating companies? A. James F. Waters.

Q. Is the cab which is so sold by James F. Waters an ordinary pleasure car? A. No.

Q. Has the DeSoto Company made that type of car continuously since 1929? A. It has not.

Q. With respect to the Packard, is that an ordinary stock model? A. No.

Q. Has Packard manufactured its present type of cab continuously during the period from 1929? It has not.

Q. Questions were asked you on cross examination concerning your participation in the purchase of stock

1503 by Cab Sales from Checker stockholders. Did you act, in connection with those negotiations, personally or as an officer or director of CCM? A. Personally.

Q. Does CCM still sell cabs to anyone who will purchase them A. It does.

Q. And has that been its policy continuously since 1929? A. It has.

Q. Was that also its policy before 1929? A. It was.

Q. You testified on cross examination concerning certain sales offices of CCM. Under the present sales offices of CCM, which I believe you said were in Kalamazoo and New York, is that right? A. That is right.

Q. Does CCM sell to anybody who will buy its cabs so long as CCM can produce them in sufficient quantity? A. That is true.

Mr. Lynton: I have no further questions.

1504 Recross Examination.

By Mr. Williams:

Q. Did you conduct any of this personal activity in connection with the acquisition of Checker stock during normal business hours?

Mr. Lynton: Will you read that question?

(Last question read by reporter.)

By the Witness:

A. I don't believe so.

By Mr. Williams:

Q. Did you do any work as advisor for Mr. Markin while you were on a percentage basis during normal business hours? A. I did.

1505 Q. Was any deduction made from your salary received from CCM for this work and the time spent on it?

Mr. Lynton: I object to the question. I think it is quite immaterial.

The Court: I don't see the materiality.

Mr. Williams: They are trying to draw a distinction between his acting in a personal capacity and acting for CCM. I want to bring out he was actually paid by CCM and it was not deducted.

The Court: You may answer that question.

The Witness: Will you read the question, please?

(Question read.)

By the WITNESS:

A. No. No deduction was made.

By Mr. WILLIAMS:

Q. Do you know whether there is any material difference between the DeSoto cab made by Mr. Waters or sold by Mr. Waters, and the DeSoto stock car? A. Yes.

Q. Can you tell us what those differences are? A. The first and most important difference is a partition between the driver and the passenger's compartment, and in
1506 the driver's compartment there is only room for the driver, there is not room for anyone else to sit. I believe that they have also attempted to increase the wearing qualities of some of their fast wearing parts, but I can't tell you which ones.

Q. Is the Packard substantially the same, the differences? A. Yes.

Mr. WILLIAMS: That is all.

Mr. LYNTON: No further questions.

The COURT: You are excused.

(Witness excused.)

The COURT: The Court will recess for ten minutes.

(Recess taken.)

Mr. LYNTON: Your Honor, I think we may be in a better position to re-estimate the duration of the case so far as we are concerned, and I wanted to advise your Honor that it may be possible that we will be finished with our part of the testimony by Thursday of this week.

The COURT: That is fine.

Mr. LYNTON: So that the Court may arrange his schedule thereafter bearing in mind that possibility.

1507 The COURT: Thanks for advising me of it. I certainly have a heavy schedule and I need all the information I can get.

Mr. LYNTON: Mr. Samuels.

BENJAMIN SAMUELS, called as a witness on behalf of the defendants, being previously duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. LYNTON:

Q. Mr. Samuels, are you President and a Director of Chicago Yellow? A. I am.

Q. Are you Vice-President and a Director of Yellow? A. I am.

Q. Who is President of Yellow? A. Thomas Hogan.

Q. Is he on partial retirement? A. Practically so.

Q. When were you first employed by Yellow? A. October 1, 1918, subject to certain correction. Prior to
1508 that time I was practicing law and I was employed in special cases, special matters, but since October 1, 1918, I have devoted my entire time to Yellow.

Q. I show you a chart and ask you whether that correctly represents the organization, capitalization and acquisition of subsidiaries by years of Chicago Yellow? A. It does.

Mr. Lynton: I offer it into evidence.

Mr. Hotchkiss: No objection.

The Court: It is received.

(Said document, so offered and received in evidence, was marked Defendants' Exhibit 15.)

Mr. Lynton: I think it may help the Court during the course of the next few questions to have this chart before him.

Q. Mr. Samuels, I refer to this chart, Defendants' Exhibit 15. I first direct your attention to Walden W. Shaw Livery Company, organized August 29, 1910, and ask you what in the early days of its business was the character of its business? A. Engaged in the taxicab business.

Q. And by that do you mean the operation of
1509 taxicabs? A. The operation.

Q. Were some of those cabs horse-drawn in the beginning? A. Well, I don't know whether they were horse-drawn, but there were some ancient vehicles and then some converted pleasure cars.

Q. Were payments made during those early days by passengers on a cash or a credit basis? A. No, the Walden W. Shaw Livery maintained a rather extensive credit system. It was known as credit by a key.

Q. So that a passenger hiring one of the cabs during the early days of Walden W. Shaw Livery Company would pay by credit, is that right? A. That is right.

Q. And did a time come during the life of Walden W. Shaw Livery Company when it began to assemble parts and cabs? A. It did.

Q. And during the middle of 1920 did that company change its name to Yellow Cab Manufacturing Company? A. It did.

Q. And did Yellow Cab Manufacturing Company
1510 produce cabs? A. Yes, that was its main business.

Q. And during the period from the middle of 1920 until the middle of 1925 was Yellow Cab Manufactur-

ing Company engaged principally in the manufacture of cabs? A. That is right.

Q. Were those cabs a purpose built cab? A. They were purely a purpose built cab.

Q. In the middle of 1925 was the stock of Yellow Cab Manufacturing Company sold? A. Yes, sir.

Q. To whom? A. General Motors.

Q. Now I should like to direct your attention to the righthand side of this chart, Defendants' Exhibit 15, and you will observe that Yellow Cab Company was incorporated in 1925, is that right? A. 1915.

Q. I am sorry. 1915. What was the business of Yellow Cab Company during the early days? A. Purely a taxicab operating company.

Q. Was there any distinction made between the
1511 cash and credit basis? A. Yellow Cab Company always operated on a strictly cash basis.

Q. I direct your attention to the chart which shows two arrows leading from Walden W. Shaw Livery Company and Yellow Cab Company in the late part of 1916. Those arrows show that these two companies became subsidiaries of Walden W. Shaw Corporation, New York, is that the fact? A. That is right.

Q. Did Walden W. Shaw Corporation, New York change its name in the middle of 1921 to Chicago Yellow Cab Company, Inc.? A. That is right.

Q. Did Chicago Yellow Cab Co. Inc. own the stock of Walden W. Shaw Livery Company, later Yellow Cab Manufacturing Company until the sale to General Motors in 1925? A. That is right.

Q. Did Walden W. Shaw Corporation, New York, later Chicago Yellow Cab Co. Inc. own the stock of Yellow Cab Co. from 1915? A. That is correct, all of the stock.

Q. In 1919, was the Benzoline Motor Fuel Company organized? A. That is correct.

1512 Q. Was all of its stock on organization or immediately thereafter acquired by Walden W. Shaw corporation, New York? A. That is right.

Q. What was the business of the Benzoline Motor Fuel Company? A. Buying and selling gasoline, lubricating oils, kerosene and kindred products. In those early days, we engaged in the blending of gasoline and benzol. That is how we got the name.

Q. Before the sale in 1925 of the stock of Yellow Cab Manufacturing Company to General Motors, did Yellow

purchase all of its cab requirements from Yellow Cab Manufacturing Company? A. I believe so, without any question.

Q. And were those cabs so purchased always purpose-built cabs? A. Every one of them.

Q. Who had the executive direction of Yellow and Chicago Yellow and Yellow Cab Manufacturing between 1918, when you first came to Yellow, and 1925 when Yellow Cab Manufacturing was sold to General Motors? A. Mr. John Hertz.

Q. Was he also the owner of a substantial interest
1513 of the stock of Chicago Yellow? A. He always had a very substantial interest in it.

Q. Do you know who negotiated the sale of Yellow Cab Manufacturing Company to General Motors? A. Just by hearsay.

Q. Was Mr. John D. Hertz in executive direction in the middle of 1925? A. He was.

Q. Was he present at the offices of the Yellow and Chicago Yellow at that time? A. Yes.

Q. Was he president of Chicago Yellow at that time? A. Yes, sir, he was.

Q. Also of Yellow? A. And of Yellow.

Q. Were you present at any discussions between Mr. Hertz and anyone else concerning the proposed sale of the stock of Yellow Cab Manufacturing Company to General Motors? A. I remember some discussions in Mr. Hertz's office. Mr. Hertz and Mr. Grey, who was then the general manager of Yellow, sat in on some of the conferences.

1514 Q. Did Mr. Hertz take the lead in those discussions? A. I would say he took more than the lead. It was complete direction.

Q. After the sale of the stock of Yellow Cab Manufacturing Company to General Motors, did Mr. Hertz ever mention in your presence anything concerning the topic of his proposed withdrawal from the taxicab business? A. It was discussed several times.

Q. What did Mr. Hertz say? A. His wife was pressing him to get out of the cab business. It was getting too rough and there had been too much turmoil on the streets, and I don't recall when his racing barn was set on fire, but it was in connection with that and the previous story about threats to kidnap his grandson, and then that culminated in stories in the office in which Mr. Grey and I sat that he

was getting sort of fed up with these complaints from his wife, and made up his mind that he had better give in to her and get out of this business.

Q. Did Mr. Hertz mention to you the threatened kidnapping of his grandson? A. It was spoken of several times.

1515 Q. Can you fix the approximate year? A. Well, it was in the period somewhere between 1925 and 1928.

Q. Were Mr. Hertz's racing stables burned? A. They certainly were.

Q. Did he mention that, too? A. That was mentioned in the office not once but several times.

Q. Did Mr. Hertz say anything concerning any connection between these events and taxicab operations in Chicago? A. He was definitely of the opinion, of which he had no evidence—we were not able to uncover anything, but it was all due to some of the taxicab competitors, because we had had so much trouble on the streets with our main competitor.

Q. Before 1929, did Mr. Hertz mention to you his desire to sell his stock interest in Chicago Yellow? A. It was discussed in the office.

Q. In connection with those discussions had he ever mentioned to you the possibility that you might sell such stock as you held in Chicago Yellow? A. It was

1516 brought up at the time that Mr. McCullough was engaged in some negotiations looking toward the sale of what was called in rough language in the office the Hertz interests in Yellow.

Q. Yellow Cab Manufacturing before its sale to General Motors was located in Chicago, was it not? A. It was.

Q. Shortly after its sale, was its plant moved? A. Well, I would not say it was shortly after. My best recollection is that after the sale of Yellow Cab Manufacturing Company to General Motors, they still continued the plant on Dickens Avenue for over a year.

Q. And then at the end of the year, was the plant transferred? A. Then they moved the whole plant over to Pontiac, Michigan.

Q. In connection with the sale to General Motors of Yellow Cab Manufacturing Company, was there also sold to General Motors a company called Yellow Sleeve Valve Engine Works? A. There was.

Q. What was that company? A. It was a company located somewhere in the western part of the state.
1517 I think it was in Moline, Illinois. They manufactured a special type of automobile engine. I think it was called a sleeve valve engine.

Q. Was that engine used for trucks and buses? A. It was used for trucks and buses and they put some of them into one model of Yellow cab.

Q. Did Yellow Sleeve have patents for these devices? A. Yes.

Q. Were those patents conveyed to General Motors as part of the sale? A. The whole thing went with the sale of Yellow Cab Manufacturing Company.

Q. I take it Yellow Sleeve was connected with Yellow Cab Manufacturing? A. A subsidiary, I think a wholly owned subsidiary, as I recall.

Q. Did some of the personnel of Yellow Sleeve go over to General Motors at that time? A. Mr. Green, the chief engineer, who came out of Yellow Cab Manufacturing Company originally as engineer, and was engineer at the Moline plant, he went to Pontiac.

Q. After the sale to General Motors, was there
1518 a change in the name of Yellow Cab Manufacturing Company? A. After they got to Pontiac, they changed it to Yellow Truck & Coach Manufacturing Company.

Q. Was that Yellow Truck & Coach Manufacturing Company also known as a division of General Motors? A. It was.

1519 Q. And sometime later was the name Yellow Truck and Coach Company changed? A. Yes.

Q. And what was the final name? A. General Motors Truck Company.

Q. Did you visit the plant of Yellow Truck and Coach Company at Pontiac before 1929? A. I did.

Q. How many times? A. Well, I would say at least five or six times.

Q. And what was Yellow Truck and Coach Company manufacturing at that plant while you were there? A. Principally motor coaches.

Q. Did you observe any production of cabs while you were there? A. There were a very very few of them. I couldn't count ten at any one time in the whole plant.

Q. Yellow during the period after the sale of the Yellow Cab Manufacturing to General Motors and before

1929 bought some cabs from Yellow Truck and Coach Company, did it not? A. Yes.

Q. With respect to the general status of the equip-
1520 ment of Yellow shortly before 1929, will you say that the Yellow fleet was in a newly replaced state, or was it in a state of age? A. It was quite aged.

Q. And I understand that you mean to convey by that that the cabs used in the Yellow fleet had been used for some time? A. That is right.

Q. Was replacement of that fleet necessary as 1929 approached? A. No question about it.

Q. Did Yellow before 1929, immediately before 1929, purchase any other cabs than the cabs previously made by Yellow Manufacturing Company and Yellow Truck and Coach? A. Yes. In the latter part of 1928.

Q. What cars were purchased? A. Buicks.

Q. Do you remember how many were purchased? A. I think it is ten, if I remember correctly.

Q. And did Yellow experiment with those cars? A. It did.

Q. For how long a time? A. Until we found that they were impractical.

1521 Q. And how long was that? A. Less than six months. I mean it took us about six months to find they were impractical.

Q. When you say "impractical" you mean from the standpoint of the needs of taxi operations in Chicago by Yellow, do you not? A. That is right.

Q. Did you know of Ernest H. Miller in 1929? A. I knew him very well.

Q. Did you know him before 1929? A. Yes, sir.

Q. Had you met him before 1929? A. Many times.

Q. What was Mr. Miller's reputation immediately before 1929? A. I would say that Ernest Miller was known in the taxicab business as probably the best taxicab operating man in the industry.

Q. Had he any relationship prior to 1929 with Mr. Hertz? A. Yes.

Q. Prior to 1929, was he connected with the Yellow Taxi Corporation, New York? A. Yes. Before that he started the Yellow Cab in Newark, New Jersey, when he
1522 bought his first cabs from Yellow Cab Manufacturing Company, and then went into New York.

Q. Do you know what office he held of Yellow Taxi Corporation of New York before 1929? A. I don't know the

exact office, but he was either the President and General Manager or the Vice-President and General Manager.

Q. To your knowledge, was he the person that actually managed the taxicab operations of Yellow Taxi Corporation of New York before 1929? A. He was.

Q. Was that also the case with respect to Yellow of Newark? A. That is right.

Q. Did you know Mr. Charles A. McCullough? A. Very well.

Q. Did you know him before 1929? A. Yes, sir.

Q. Was he a Vice-President of Chicago Yellow in 1928? A. Yes.

Q. And while he was Vice-President, was Mr. Hertz President? A. He was Vice-President. Mr. Hertz
1523 was still President.

Q. And did Mr. McCullough become Chairman of the Board of Directors of Chicago Yellow in February, 1929? A. That is right.

Q. Did you also know Mr. Charles A. McCullough in connection with The Parmelee Company? A. Yes.

Q. And by The Parmelee Company I refer to the company which was engaged in the business of transferring passengers and luggage between Chicago railroad stations. Do you understand that to be the question? A. That is right. The Chicago Company, here.

Q. Was Mr. McCullough in 1928 the Chairman of the Board of The Parmelee Company? A. I believe that is right.

Q. And was he Chairman of the Board for about ten years before 1929? A. Quite a long time. I know that.

Q. And did he remain Chairman of the Board after January 1, 1929? A. I believe that is right. I don't know when he severed his connection. I thought it was
1524 about the summer of that year.

Q. Did Mr. McCullough also know Mr. Hertz? A. Very very well.

Q. By the way, the ten Buicks which you mentioned as having been bought during the latter part of 1928 were stock model Buicks, were they not? A. That is correct.

Q. They were not purpose built cabs? A. No, they were stock passenger cars.

Q. Did you know Checker Cab Manufacturing Company's Model K in 1928? A. I knew there was such an instrument on the market.

Q. Had you ever seen it? A. I had.

Q. Had you heard anything about it in taxicab circles in 1928? A. Yes.

Q. What did you hear? A. Well, I was in New York not once, but probably a dozen times in 1926, 1927 and 1928, and I heard the story of cab operators and the experience of some of those who were in executive positions in some of the companies.

1525 And in 1928 did you hear any discussion directed to the new Model K introduced by Checker? A. Well, I knew that it was coming out, but I can't say that I heard anything particularly different from the experiences of the men who were using them in New York.

Q. Before that time? A. Yes.

Q. Mr. Hogan was with Yellow in 1928 and 1929, wasn't he? A. He was.

Q. And what was the general nature of his duties with Yellow? A. Hogan was in charge of the general cab operations as general manager.

Q. And was Mr. Stouffer also with Yellow in 1928 and 1929? A. He was.

Q. What was the general nature of his duties with Yellow? A. He was in charge of the maintenance department.

Q. Maintenance of cabs? A. Yes.

1526 Q. Did Mr. Hogan and Mr. Stouffer discuss with you the question of cab purchases in the latter part of 1928 and the early part of 1929? A. Yes. We had several conferences about what we were going to do about replacing our fleet.

Q. In early 1929 and before April 1929, did Mr. Hogan and Mr. Stouffer go to Kalamazoo to inspect the Model K cab? A. That is right.

Q. And when they returned, did they report their visit to you? A. They did.

Q. Yellow bought 1,035 Model K's during the course of 1929, did it not? A. As I recall it, yes.

Q. I should like to bring you forward to the year 1935. In that year did the officers and directors of Yellow consider the specifications of various cars which might be used for taxicab purposes? A. Yes, sir.

Q. And was that consideration also had at a directors' meeting? A. Yes.

1527 Q. If I suggest the date March 28, 1935, does that refresh your recollection as to the date of a particular directors' meeting? A. That is right.

Q. And do you recall that at that meeting there were invited the cars at Auburn, Nash, Ford, Packard, Pontiac and Buick as well as that made by CCM? A. That is right.

Q. What was the consensus of opinion at that meeting concerning the relative merits of the cab made by CCM and these others which I have mentioned?

Mr. HOTCHKISS: I have not objected to the leading questions, but—

The COURT: Objection sustained. You may state what was said.

By the WITNESS:

A. At that time Mr. Hogan and Mr. Stouffer took up most of the discussion, Stouffer particularly because he had checked specifications of a number of these cars. I remember in particular that on one occasion he actually took me to take a look at the Packard. We not only saw it at
1528 their sales room but we even went over to—they a special exhibit, and it narrowed itself down to the proposition that in order to get a car that would do taxicab business none of these so-called standard pleasure cars would answer the purpose.

In the first place, we had ordinances here that required that no one had a right—no one could ride in the front seat. All these passenger cars—

Mr. HOTCHKISS: I object. I request at least part of this testimony be stricken.

The WITNESS: This was brought out for the benefit of the directors at this meeting.

Mr. HOTCHKISS: If it was stated at the meeting—

The COURT: I think it is competent. This is the report that was made?

The WITNESS: Yes. This was pointed out, that in order to get a cab that would satisfy the city ordinance of Chicago, we had to have a cab that would take care of up to five passengers and not allow anyone to ride in the front seat with the driver, and up to this time that we were discussing the matter the only one that offered any
1529 solution to that was Packard, and they suggested to us at the time that I had gone down, which we were then reporting to the Board, that by lengthening out the chassis about 12 inches they felt that they could get enough room in the back so that they could put a partition in where the ordinary front seat would end, and the engineer then had gone to work, as we pointed out in this report, and tried to re-engineer their car, and after working on it for over

sixty days they came back and had reported to Mr. Stouffer that they thought it was a physical impossibility without re-engineering the whole car, and they gave it up.

1530 So at that meeting that we were making this report, Mr. Stouffer principally, we came to the final conclusion that it was a choice between CCM and one other car which was a purpose-built car. It was made somewhere down in Maryland. And we had looked at that car in New York, and it was a car—you people will possibly remember it. It had big pipes leading out from both sides of the hood. It resembled one of the racing cars they use down at Indianapolis. We had come to the conclusion, as between those two models, there was no question we had to resolve ourselves to the CCM car.

By Mr. LYNTON:

Q. And you actually did buy CCM cabs in 1935, did you not? A. That is right.

Q. Mr. Samuels, do you know of any manufacturer of automobiles who built purpose-built cabs continuously during the period from 1929 to date except CCM? A. None.

Q. After this last war, World War II, Yellow
1531 bought pleasure cars, did it not? A. That is right.

Q. At present is Yellow's fleet entirely composed of pleasure cars? A. Well, with the exception of about fifteen cars which are still Model A Checkers.

Q. Mr. Samuels, has Yellow ever had a contract with CCM requiring Yellow exclusively to purchase cabs from CCM? A. Never.

Q. I should like now to direct your attention to a loan in 1931 by Benzoline to Cab Sales. Benzoline is the Benzoline Motor Fuel Company which is shown by the chart, Defendants' Exhibit 15, to have been organized in 1919 as a wholly owned subsidiary of Walden W. Shaw Corporation, New York, later Chicago Yellow. Had Benzoline been engaged in the fuel business between its organization in 1919 and 1931? A. Yes, sir. It still is.

Q. Do you recall the negotiation of a loan in 1931 from Benzoline to Cab Sales? A. Yes, sir.

Q. Did you participate in that negotiation? A. I did.

1532 Q. On behalf of Benzoline and Yellow? A. Benzoline and Yellow.

Q. Who acted for Cab Sales? A. To my best recollection, it was Mr. L'Amoreaux.

Q. Mr. Paul C. L'Amoreaux, is that right? A. Yes.

Q. A loan was made, was it not? A. It was.

Q. Do you recall the amount? A. I think it was $500,000.

Q. At the time of making of that loan, was a contract entered into between Cab Sales and Benzoline? A. There was.

Q. Was there security given for the loan from Benzoline to Cab Sales? A. Yes.

Q. Did that security include a majority of the shares of the stock of Checker Taxi Company? A. It did.

Q. What were the reasons so far as concerns Yellow for the making of that loan at that time? A. Well, there were several reasons.

Mr. HOTCHKISS: Your Honor, this is calling for
1533 the conclusion of the witness.

Mr. LYNTON: Do you object to the question?

Mr. HOTCHKISS: Let counsel set the questions in the proper manner.

Mr. LYNTON: Are you making an objection to the question I have asked?

Mr. HOTCHKISS: Yes.

Mr. LYNTON: Will you read the question?

The COURT: What were the reasons for the loan?

Mr. LYNTON: Does the court wish to rule on that?

The COURT: Yes. Objection overruled. I think it is calling for facts.

By the WITNESS:

A. There were three reasons, as I viewed it at the time. In the first place, we had a lot of money in the treasury which we were unable to get any reasonable interest on, and this loan afforded a very fine rate of interest. I think there the interest was 5 per cent or 6 per cent. I haven't got it in mind.

Second, and still more important, was the sales contract to sell gasoline at a profit.

And, third, the security was so ample that we did
1534 not have to worry in our judgment about the paying off of the loan.

By Mr. LYNTON:

Q. At that time wasn't Checker Taxi Company a competitor with Yellow for taxicab business on the streets of Chicago? A. It was our main competitor.

Q. Was that factor taken into consideration? A. It was.

Q. Immediately before making of the loan, do you know who was the president of Checker Taxi Company? A. A Mr. McLaughlin.

Q. And did you know of the other officers of the Checker Taxi? A. I not only knew of them; I knew them all.

Q. During the period immediately prior to the loan, was

there any force or violence on the streets of Chicago with respect to taxicab operations? A. Too much.

Q. Did that factor form a reason in connection with the loan by Benzoline to Cab Sales? A. It was a very important reason.

Q. Would you explain the reason in your own words? A. Well, it was one thing to have people battling
1535 against you all the time on the streets and causing the business to get into the field where people were afraid to ride in cabs. It was another thing to stablize the industry, and we felt that by this type of loan, where we had ample security, that our competitor would feel a sort of a friendly interest in us rather than an antagonistic interest in us.

1536 Q. And by friendly interest, do you refer to competition on a business level? A. On a business level and business basis.

Q. By unfriendly interest, do you refer to competition? A. Riots, disturbances, shootings and everything else that went with it.

Q. Did Yellow consider the possibility at that time that it might ever buy the stock of Checker rather than loan money through Benzoline to Cab Sales? A. I do not think we ever entertained an outright purchase at that time.

Q. Why? A. Because the cry has always been monopoly and we were opposed to it ourselves.

Q. At that time, do you know whether the officers of Checker Taxi would have sold their stock to Yellow? A. I am pretty sure they would not.

Q. About a year later, in 1932, was there an additional sum loaned by the Waverly Company to Cab Sales? A. I think it was $200,000.

1537 Q. And as collateral for the repayment of that loan, was additional stock of Checker deposited? A. Yes, so that we had I think somewhere between ninety and one hundred per cent of the stock.

Q. Did you receive interest on your loan of $700,000, and by your loan, I refer to the two loans of Benzoline and Waverly? A. We did.

Q. And in addition to that, did Benzoline earn a profit on its sales of gasoline and oils? A. At all times.

Q. Do you know what the combined amount of interest payments and the profit on the sales of gasoline and oil was in favor of Benzoline? A. Well, Benzoline and Waverly, over $400,000.

Q. If I suggest to you that the figure was $394,672.66 on the aggregate loans of $700,000, does that refresh your

recollection? A. That would be right. If you say it is $392,000, then I am corrected.

Q. I would like now to direct your attention to the year 1933. Do you recall in 1933 any negotiations between Parmelee and Yellow for financing? A. Yes, sir.

1538 Q. What were those negotiations? A. Parmelee wanted to borrow some money and we discovered, in going into the deal, that they had no right to pledge stock under the conditions surrounding their bonds.

Q. And by bonds, you refer to the collateral trust notes which were issued under a trust indenture? A. I imagine that is what it was. We always referred to them as Parmelee bonds. They were on the stock exchange. They had no right to pledge any of their assets, so the lawyers figured out the method by which we could practically accomplish the same purpose by buying the stock with an option to repurchase.

Q. That is to say that Yellow would purchase from Parmelee shares of Chicago Yellow? A. Yes.

Q. And at the same time, Parmelee would have an option to repurchase from Yellow those shares of Chicago Yellow, is that right? A. You stated it better than I did.

Q. Was the option to be exercised within a limited
1539 time? A. I believe there was a definite limit.

Q. Did that limit extend beyond 1933? A. I think it had to be exercised within the year, as I recall it now.

Q. Within the year of 1933? A. Yes.

Q. In fact, was there 25,000 shares of Chicago Yellow sold by Parmelee to Yellow with a repurchase option? A. Yes.

Q. And in December, 1933, did Parmelee exercise its option to repurchase those 25,000 shares? A. They did.

Q. Were those shares thereby repurchased by Parmelee? A. They were.

Q. Did Yellow receive any differential between the purchase and the repurchase price? A. Well, we received all the dividends on the stock while it was in our possession together with a differential of 50 cents a share profit.

Q. That would be 50 cents per share on each share of the 25,000 shares plus dividends that were declared pay-
1540 able during the period of ownership by Yellow? A. Yes.

Q. Were any such dividends declared and payable? A. There were regular dividends during all that period.

Q. I shall now bring you forward to the year 1937, Mr. Samuels. Do you recall in that year that there was a drivers' strike? A. Very well.

Q. In 1937, was Mr. Levin Rank president of Parmelee? A. He was.

Q. Was Parmelee the management advisor to Yellow? A. It was.

Q. Prior to 1937, had Mr. Levin Rank ever stated to Yellow his opinion concerning the number of licensed cabs in the city of Chicago? A. He had.

Q. What did he say? A. He wrote a rather long opinion as to that.

Q. No, first, I ask as to his oral statement. What did he say? A. He said we did not need in Chicago over 2,500 licensed cabs.

1541 Q. Was that an opinion formulated on the basis of statistics? A. Yes, sir.

Q. Which Mr. Levin Rank mentioned to officers of Yellow? A. He did.

Q. Including you? A. Yes, sir.

Q. Did Mr. Levin Rank, in the mentioned capacity, participate in the strike settlement negotiations on behalf of Yellow? A. He did.

1542 Q. Was there a settlement of the strike? A. There was.

Q. And after that settlement, were there further negotiations with union representatives? A. They began as soon as the strike was over and continued from then until the end of the year.

Q. What was the topic of the discussions? A. How to improve the wage earnings of the driver and what methods could be resorted to to raise the standard of wage.

Q. What was the solution suggested? A. The only solution suggested by all of the parties interested was that there had to be a reduction in the cabs licensed.

Q. And by all parties interested, do you include representatives of the drivers union? A. They took part in all of the conversations and discussions.

Q. Do you also include Yellow? A. Yellow.

Q. Do you also include Checker and Cab Sales? A. They were in it.

Q. And do you also include discussions before
1543 the Public Vehicle License Commission of Chicago? A. Yes, and the Aldermen of Chicago.

Q. Do you recall an agreement dated January 3, 1938, between Yellow and Checker? A. I do.

Q. Do you recall that under that agreement certain consideration was paid by Yellow to Checker for Checker's reduction of the number of cabs operated by it? A. I do.

Q. Did Mr. Rank in the mentioned capacity carry on the

negotiations for Yellow with Checker? A. He handled the whole transaction up to the time we discussed it in our Board meeting as to just how much this relinquishment was worth to us.

Q. Did you yourself participate in any of those discussions? A. I did.

Q. Did you participate in discussions with Mr. Rank? A. Yes.

Q. Did you participate in discussions with Mr.
1544 Sokoll? A. No.

Q. I direct your attention to Government's Exhibit 390, which is a letter dated January 6, 1938, from Mr. Fuller to Mr. Rank.

Did you see that letter about the date that it was received? A. I don't recall whether I saw this letter, but I know it was discussed in the office.

Q. You mean the topic was discussed or the letter was discussed? A. The subject matter.

Q. And by the subject, do you mean the question of the consideration to be paid to Checker? A. Yes. I see they mention here $550 per license, which is the amount that is set up in the written contract that we finally signed. And I was under the impression we discussed more than $640 as against $550. I think it was a higher sum than that.

Q. Do you mean to convey by your answer that there were discussions among the offices of Yellow as to the consideration which would be payable to Checker per license?

A. That is right.

1545 Q. Do you also mean to convey that the discussion concerned not only the figure of $550 per license mentioned in that exhibit and $640 per license mentioned in that exhibit, but also other figures? A. Yes.

Q. A higher figure than $640 per license? A. I definitely remember the figure $650, and my offhand recollection would be a figure of $700 was also discussed.

Q. Was that discussed subsequent to the enactment of the ordinance of December 22, 1937? A. Yes, it was.

Q. Had you also known that Mr. Rank had been discussing with Mr. Sokoll possible amounts of consideration before the enactment of the December 22, 1937, ordinance? A. The only thing I can recall on that is that Mr. Rank said he was in negotiations with Mr. Sokoll, and my impression is that whenever the question came up about whether there was going to be—how much compensation there would be for giving up of their 500 licenses—when I say their, I mean Checker Taxi Company's licenses, Mr. Rank said there would be plenty of time to discuss

1546 that when the ordinance was passed if it was ever passed.

Q. Mr. Samuels, was there ever any discussion among any of the officers of Yellow that Yellow would pay any consideration to Checker regardless of whether the ordinance was passed? A. No, no such discussion.

Q. Was the discussion of payment contingent on the passage of the ordinance? A. It was not only contingent, but we refused to discuss any question of compensation with Checker until that ordinance became a matter of law.

Q. In connection with the negotiations on the strike settlement of 1937, was there ever in any discussion of the purchase of cabs from CCM in connection with the strike settlement? A. Absolutely not.

Q. In connection with the negotiations leading to the agreement of January 3, 1938, and the agreement itself, was there ever any discussion as to the purchase of cabs from CCM in connection with those matters? A. It did not enter into it at any time.

1547 Q. Was there ever any consideration given to it by any of the officers or directors of Yellow in connection with this strike and the consideration matters? A. There was not.

Q. Has Yellow ever engaged in the business of transferring passengers and baggage between railroad stations of the City of Chicago pursuant to a contract with

1548 railroads or railroad associations? A. We have never had any contracts with railroads at any time regarding that subject matter.

Q. Did Yellow ever engage in that business? A. Never.

Q. Does Yellow operate all of its cabs subject to the ordinances of the city of Chicago? A. It does.

Q. Has Yellow ever operated vehicles other than its public taxicabs? A. No.

Q. Has Yellow ever attempted to engage in the business of transferring passengers or luggage between rail road stations in Chicago pursuant to contracts with railroads or railroad associations? A. Not pursuant to any contract; only, under the city ordinances, if anybody calls for a cab and wants to go from one depot to another, under the law we have to take them.

Q. And you do? A. We do.

Q. Has Yellow ever discussed the topic of engaging or not engaging in the business of transferring passengers and luggage between railroad stations with Checker

1549 Taxi Company? A. It has never been discussed.

Q. Or with any other person, firm or corporation? A. No, sir.

Q. In your opinion, would it be practical, as a matter of taxi operations, to use a driver to drive a taxicab one day and then use him the second day to drive a truck which carries baggage between railroad stations in Chicago? A. It would be impossible.

Q. Would it be practical as a matter of taxicab operations to use a driver of taxicabs one day, and then have him drive a limousine to carry passengers between Chicago railroad stations the next day? A. It could not be done.

Q. Has Yellow equipment consisting of trucks and requisites for the carriage of baggage between railroad stations in Chicago? A. We have no such equipment at all.

Q. Has Yellow any driving personnel other than its taxicab driving personnel? A. Yes, we have five tow truck drivers.

Q. Is that the complete personnel drivers? A. Yes, sir.

Q. Do you have any familiarity with the account-
1550 ing work which is entailed in the checking of baggage of passengers between railroad stations in Chicago? A. Just in a general way.

Q. Does Yellow presently have any staff that could carry on that type of accounting work? A. It could not.

Q. Have you ever engaged in the business of transferring passengers and baggage between Chicago railroad stations? A. Only incident to the taxicab business.

Q. And I am referring, when I use that term, transfer business, the business of transferring persons and baggage pursuant to railroad contracts? A. No.

Q. Has anyone employed by Yellow had any familiarity with that business so far as you know? A. There is only one man that has ever had any experience—two men that I know of; that is Charles McCullough, himself, and Mr. Arthur Moore, who was president of our company for a few months.

Q. Is Mr. Charles McCullough living? A. No, he is dead. Mr. Moore has retired for many, many years.

Mr. Lynton: You may cross examine.

1551 Mr. Hotchkiss: Your Honor, I suggest it is nearly 4:30 now. The cross examination may be somewhat lengthy.

The Court: The court stands adjourned until 10 o'clock tomorrow morning.

(Thereupon an adjournment was taken to 10 o'clock a. m. of the following day, June 8, 1948.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948.

No. 563.

THE UNITED STATES OF AMERICA, APPELLANT,

vs.

YELLOW CAB COMPANY, CHICAGO YELLOW CAB COMPANY, INC., PARMELEE TRANSPORTATION COMPANY, *et al.*

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

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No. 118	March 28, 1935, Minutes of Directors Meeting of Benzoline	2044	1183
No. 119	March 28, 1935, Minutes of Directors Meeting of Chicago Yellow	2045	1185
No. 120	October 24, 1935, Minutes of Directors Meeting of Benzoline	2047	1186
No. 121	October 26, 1935, Letter, President of Cab Sales to Benzoline	2049	1188
No. 122	December 19, 1935, Minutes of Directors Meeting of Benzoline	2050	1190
No. 123	January 24, 1938, Minutes of Directors Meeting of Chicago Yellow	2051	1190
No. 124	December 21, 1938, Waiver of Notice of Directors Meeting of Federated Enterprises, Inc., With Attached Agreement dated December 21, 1938, between Federated Cab Sales, Chicago Yellow, and Benzoline	2055	1195
No. 125	February 6, 1939, Memorandum, Oakland to Freimark	2060	1201
No. 126	July 24, 1942, Minutes of Directors Meeting of Cab Sales	2060	1201
No. 127	July 29, 1942, Minutes of Directors Meeting of Checker	2061	1202
No. 128	Sept. 17, 1942, Minutes of Directors Meeting of Checker	2061	1203
No. 129	Plaintiff's Interrogatory No. 2	2062	1204
No. 130	Checker's Answer to Plaintiff's Interrogatory No. 2	2063	1204
No. 131	September 21, 1942, Minutes of Directors Meeting of Cab Sales	2063	1205
No. 132	September 26, 1945, Letter from Sokoll, Pres. Cab Sales to Internal Revenue Agent in Charge, Chicago, Illinois	2064	1206

		Original	Print
No. 133	Plaintiff's Interrogatory No. 21	2066	1208
No. 134	Markin's Answer to Plaintiff's Interrogatory No. 21	2066	1208
No. 135	November 5, 1937, Letter, R. E. Oakland, V. P. and Tr. of CCM, to Mike Sokoll, Pres. Checker	2066	1208
No. 136	November 3, 1938, Letter, R. E. Oakland, V. P. and Tr. of CCM, to M. M. Sokoll, of Checker	2066	1208
No. 137	November 16, 1938, Letter, Sokoll of Checker, to Oakland of CCM	2067	1209
No. 138	January 5, 1939, Letter, R. E. Oakland, V. P. and Tr., CCM, to Sokoll of Checker	2067	1209
No. 139	Chart showing relationship of inter-relating stock interest between Markin, CCM, Cab Sales, Parmelee, and other related companies	2068	1210
No. 140	May 13, 1930, Minutes of Directors' Meeting of Chicago Yellow	2069	1211
No. 141	November 9, 1932, Letter from John E. Merz, Assistant Manager, Motor Equipment Manufacturers' Assn. to Oakland, V. P. of CCM	2070	1212
No. 142	November 10, 1932, Letter from Oakland, V. P. and T. of C. C. M. to Motor and Equipment Manufacturers Assoc.	2070	1212
No. 143	February 22, 1935, Letter from E. J. Thelin to Thomas B. Hogan of Chicago Yellow	2070	1212
No. 144	February 23, 1935, Letter, T. B. Hogan of Chicago Yellow to E. J. Thelin	2071	1213
No. 145	December 21, 1931, Minutes of Directors Meeting of Yellow	2071	1213
No. 146	June 17, 1932, Minutes of Directors' Meeting of Yellow	2073	1216
No. 147	February 21, 1944, Letter from S. G. Morse, Trust Officer of Continental Illinois National Bank & Trust Company to Dudley F. Jessopp	2075	1217
No. 148	July 31, 1931, Letter, R. H. Bieze, Treasurer of Yellow, to Philip M. Riesterer of First National Bank of Chicago	2075	1218
No. 149	November 22, 1932, Misutes of Directors' Meeting of Parmelee	2076	1218
No. 150	November 28, 1932, Minutes of Directors' Meeting of CCM	2077	1220
No. 151	November 30, 1932, Letter, Markin, President of CCM to Board of Directors of Parmelee	2078	1221

		Original	Print
No. 152	January 19, 1933, Minutes of Directors' meeting of Yellow	2079	1222
No. 153	January 17, 1933, Letter from Paul L'Amoreaux to Samuels of Yellow	2081	1225
No. 154	January 19, 1933, Letter Agreement between Markin and Yellow by T. B. Hogan, President, approved by Chicago Yellow by Samuels, President	2082	1225
No. 155	January 21, 1933, Letter, Markin to Yellow	2083	1227
No. 156	January 30, 1933, Letter Samuels to Markin	2084	1227
No. 157	April 5, 1933, Minutes of Directors' Meeting of Parmelee	2085	1227
No. 158	April 6, 1933, Minutes of Directors' Meeting of Yellow	2086	1229
No. 159	June 20, 1933, Minutes of Directors' Meeting of Parmelee	2087	1229
No. 160	June 22, 1933, Minutes of Directors' Meeting of Yellow	2087	1230
No. 161	June 3, 1933, Letter from Markin to Samuels	2088	1231
No. 162	July 14, 1933, Letter from Rank, Treasurer of TMC to Samuels, V. P. of Yellow	2089	1232
No. 163	July 17, 1933, Letter from Samuels to Kirkland, Fleming, Green & Martin	2089	1232
No. 164	March 31, 1934, Minutes of Directors' Meeting of Yellow	2089	1232
No. 165	August 1, 1933, Letter from Samuels, V. P. of Yellow to Parmelee	2090	1233
No. 166	August 3, 1933, Minutes of Directors' Meeting of Yellow	2091	1235
No. 167	August 3, 1933, Minutes of Directors' Meeting of Parmelee	2094	1237
No. 169	August 22, 1933, Letter from Samuels, V. P. of Yellow to Parmelee	2095	1238
No. 170	December 21, 1933, Minutes of meeting of Executive Committee of CCM	2096	1239
No. 171	December 28, 1933, Letter from Rank, Treasurer of Parmelee to CCM	2097	1240
No. 172	December 21, 1933, Minutes of Directors' Meeting of Yellow	2097	1240
No. 173	December 21, 1933, Letter Agreement between Parmelee and Yellow	2100	1243
No. 174	December 27, 1934, Minutes of Directors' Meeting of Parmelee	2100	1243
No. 175	October 11, 1934, Letter from Frank D. Fulton to Thomas Hogan	2101	1244
No. 176	December 17, 1934, Letter from Frank D. Fulton to Board of Directors of Yellow	2102	1245

		Original	Print
No. 177	December 26, 1934, Letter to Frank Sawyer	2102	1246
No. 178	January 15, 1935, Letter from Markin to Samuels	2104	1247
No. 179	January 15, 1935, Letter from Samuels to Charles Fuller	2104	1247
No. 180	January 17, 1935, Telegram from Fuller to Samuels	2105	1249
No. 181	January 17, 1935, Letter from Fuller to Samuels	2105	1249
No. 182	January 20, 1935, Letter from Samuels to Fuller	2107	1251
No. 183	January 23, 1935, Letter from Fuller to Samuels	2111	1255
No. 184	May 14, 1935, Telegram from Markin to Corporation Trust Company	2111	1256
No. 185	March 27, 1935, Letter from Chicago Yellow to Markin	2111	1256
No. 186	March 28, 1935, Minutes of Directors' Meeting of Yellow	2114	1259
No. 187	May 14, 1935, Letter from Samuels, Hogan and Bieze to Mr. Dwight P. Green, there being attached thereto an escrow dated May 14, 1935 of Marion B. Stahl and Charles Fuller and the resignations of each as directors of Chicago Yellow	2115	1261
No. 188	May 22, 1935, Letter from Samuels to Rank	2117	1263
No. 189	May 20, 1935, Letter from Rank, President of Parmelee to Mr. Dwight P. Green	2118	1263
No. 190	May 16, 1935, Letter from Rank to Paul E. Keller	2118	1263
No. 191	May 18, 1935, Letter from Keller to Rank	2118	1264
No. 192	June 20, 1935, Minutes of Directors' Meeting of Chicago Yellow	2119	1264
No. 193	June 25, 1935, Letter from Kirkland, Fleming, Green & Martin to Frank E. Fulton, with letter attached from Fulton to Chicago Yellow Cab	2120	1265
No. 194	January 12, 1934, Letter from Samuels to Markin, there being attached thereto a letter dated January 11, 1934 from Dwight P. Green to Yellow and further memorandum	2121	1266
No. 195	December 19, 1935, Letter from Dwight P. Green to Board of Directors of Chicago Yellow	2124	1270

		Original	Print
No. 196	August 20, 1935, Letter from Markin to Yellow	2128	1274
No. 197	December 19, 1935, Minutes of Directors Meeting of Yellow	2129	1275
No. 198	December 21, 1935, Letter from Lee A. Kelley to Waverly	2132	1280
No. 200	May 4, 1945, Letter from R. H. Bieze, Treasurer of Chicago Yellow to Markin	2132	1280
No. 201	April 28, 1945, Letter from Helen Logan to Markin	2133	1280
No. 202	April 16, 1936, Minutes of Directors' Meeting of Chicago Yellow	2133	1280
No. 203	July 16, 1936, Minutes of Directors' Meeting of Chicago Yellow	2134	1282
No. 204	May 18, 1937, Letter from Arthur Young to Samuels, with attachments	2136	1284
No. 205	September 23, 1940, Letter from Bieze, Treasurer of Yellow to Oakland of CCM, there being attached a letter dated September 5, 1940 to William J. Campbell	2136	1284
No. 206	Plaintiff's Interrogatory No. 23	2139	1287
No. 207	Yellow's Answer to Plaintiff's Interrogatory No. 23	2139	1287
No. 208	Chicago Yellow's Answer to Plaintiff's Interrogatory No. 23	2140	1288
No. 209	Markin's Answer to Plaintiff's Interrogatory No. 23	2140	1288
No. 210	Plaintiff's Interrogatory No. 9	2141	1288
No. 211	Parmelee's Answer to Plaintiff's Interrogatory No. 9 (a) (1), (2), (3) and (4)	2142	1289
No. 212	Parmelee's Answer to Plaintiff's Interrogatory No. 9 (a) (5)	2142	1289
No. 213	Parmelee's Answer to Plaintiff's Interrogatory No. 9 (b)	2142	1289
No. 214	Parmelee's Answer to Plaintiff's Interrogatory No. 9 (c)	2142	1289
No. 215	Chicago Yellow's Answer to Plaintiff's Interrogatory No. 9	2142	1289
No. 216	Exhibit "1" attached to Chicago Yellow's Answer (common stockholders)	2142	1290
No. 217	Exhibit "2" attached to Chicago Yellow's Answer (Chicago Yellow stockholders having more than one thousand shares)	2142	1290
No. 218	Exhibit "3" attached to Chicago Yellow's Answer (answer to plaintiff's Interrogatory No. 9 (b) (1))	2142	1290
No. 219	Exhibit "4" attached to Chicago Yellow's Answer (answer to Plaintiff's Interrogatory No. 9 (b) (2))	2142	1290

		Original	Print
No. 220	Exhibit "5" attached to Chicago Yellow's Answer (answer to plaintiff's Interrogatory No. (9) (c) (1), (2) and (3))	2142	1290
No. 221	Yellow's Answer to Plaintiff's Interrogatory No. 9	2142	1290
No. 222	Plaintiff's Interrogatory No. 10	2142	1290
No. 223	CCM'S Answer to Plaintiff's Interrogatory No. 10	2142	1290
No. 224	Parmelee's Answer to Plaintiff's Interrogatory No. 10	2143	1290
No. 225	Chicago Yellow's Answer to Plaintiff's Interrogatory No. 10	2143	1290
No. 226	Yellow's Answer to Plaintiff's Interrogatory No. 10	2143	1290
No. 227	Cab Sales' Answer to Plaintiff's Interrogatory No. 10	2143	1290
No. 228	Checker's Answer to Plaintiff's Interrogatory No. 10	2143	1290
No. 229	Plaintiff's Interrogatory No. 13	2143	1290
No. 230	Parmelee's Answer to Plaintiff's Interrogatory No. 13	2143	1291
No. 231	Plaintiff's Interrogatory No. 11	2143	1291
No. 232	CCM's Answer to Plaintiff's Interrogatory No. 11	2143	1291
No. 233	Nov. 18, 1937, Minutes of Directors Meeting of Chicago Yellow	2144	1291
No. 234	Nov. 18, 1937, Minutes of Directors Meeting of Yellow	2145	1292
No. 235	Dec. 20, 1938, Minutes of Directors Meeting of Utilities	2145	1293
No. 236	Oct. 19, 1939, Minutes of Directors Meeting of Utilities	2146	1294
No. 237	Oct. 27, 1943, Minutes of Directors Meeting of Utilities	2147	1295
No. 238	November 13, 1937, Letter from Rank, President of Parmelee to Samuels, V. P. of Yellow	2148	1296
No. 239	March 8, 1938, Minutes of Directors Meeting of Parmelee	2148	1296
No. 240	March 23, 1938, Letter from Rank of Parmelee to Freimark, President of Cab Sales	2149	1297
No. 241	July 20, 1938, Minutes of Directors Meeting of CCM	2149	1297
No. 242	July 25, 1938, Minutes of Directors Meeting of Parmelee	2151	1299
No. 243	July 19, 1939, Minutes of Directors Meeting of CCM	2151	1300
No. 244	Sept. 30, 1939, Agreement between CCM and Parmelee	2154	1303

		Original	Print
No. 245	Sept. 28, 1939, Minutes of Directors Meeting of Cab Sales	2154	1303
No. 246	Oct. 17, 1939, Minutes of Directors Meeting of CCM	2156	1305
No. 247	Oct. 31, 1939, Letter from Oakland of CCM to Sokoll of Checker	2157	1307
No. 248	January 22, 1940, Letter from Kirkland, Fleming, Green, Martin & Ellis to Securities & Exchange Commission, with attachments	2157	1307
No. 250	Oct. 31, 1941, Memorandum from C. P. G. Fuller *re* Casualty Company	2159	1309
No. 251	March 23, 1944, Minutes of Directors Meeting of Chicago Yellow	2160	1309
No. 252	March 23, 1944, Minutes of Directors Meeting of CCM	2160	1310
No. 253	March 30, 1944, Letter from Wyatt, Treasurer of Parmelee to C. P. G. Fuller	2161	1310
No. 254	Plaintiff's Interrogatory No. 26	2161	1311
No. 255	CCM's Answer to Plaintiff's Interrogatory No. 26	2161	1311
No. 256	Markin's Answer to Plaintiff's Interrogatory No. 26	2161	1311
No. 257	Parmelee's Answer to Plaintiff's Interrogatory No. 26	2161	1311
No. 258	Chicago Yellow's Answer to Plaintiff's Interrogatory No. 26	2162	1312
No. 259	Yellow's Answer to Plaintiff's Interrogatory No. 26	2162	1312
No. 260	Cab Sales' Answer to Plaintiff's Interrogatory No. 26	2163	1312
No. 261	Checker's Answer to Plaintiff's Interrogatory No. 26	2163	1313
No. 262	Oct. 25, 1939, Letter from Rank to Wyatt	2163	1313
No. 263	Nov. 8, 1939, Letter from Wyatt to Sokoll of Cab Sales, with attachment	2163	1313
No. 264	Plaintiff's Interrogatory No. 27	2164	1313
No. 265	Yellow's Answer to Plaintiff's Interrogatory No. 27	2164	1314
No. 266	Cab Sales' Answer to Plaintiff's Interrogatory No. 27	2164	1314
No. 267	Checker's Answer to Plaintiff's Interrogatory No. 27	2164	1314
No. 268	Parmelee's Answer to Plaintiff's Interrogatory No. 27	2165	1314
No. 269	April 1, 1938, Minutes of Directors Meeting of Chicago Yellow	2166	1316

		Original	Print
No. 270	Dec. 17, 1938, Letter from Bieze, Treasurer of Chicago Yellow to Oakland, V. P. of CCM, with attachment	2167	1316
No. 271	Dec. 31, 1938, Agreement of CCM	2167	1317
No. 272	June 18, 1943, Letter from Samuels of Chicago Yellow, to Albert L. Marks	2168	1317
No. 273	July 29, 1938, Letter from Oakland to Markin	2169	1318
No. 274	August 1, 1941, Letter from Markin to Samuels, President, Chicago Yellow	2169	1319
No. 275	Oct. 15, 1941, Letter from Wyatt, Treasurer of Parmelee, to Bieze, Treasurer Yellow Cab	2170	1320
No. 276	Dec. 14, 1939, Letter from Bieze of Yellow, to Rank, President of Parmelee	2170	1320
No. 277	Dec. 14, 1939, Letter from Bieze to Rank, with attachments	2171	1321
No. 278	Dec. 19, 1945, Letter from Bieze to Markin	2171	1321
No. 279	June 28, 1930, Letter from E. S. Higgins, V. P. of TMC, to Samuels of Yellow	2171	1321
No. 280	July 19, 1933, Letter from T. V. Hogan to Morris Markin with handwritten notation	2171	1322
No. 281	Jan. 16, 1941, Letter from Bieze to Oakland of CCM	2172	1322
No. 282	June 8, 1944, Letter from Oakland, V. P. of CCM, to Bieze, V. P. of Yellow	2172	1322
No. 283	June 21, 1944, Letter from Bieze to Oakland, with attachments	2172	1322
No. 284	April 25, 1940, Memorandum from Rank to Markin	2172	1323
No. 285	April 26, 1940, Letter from Rank to Hogan, President of Yellow	2173	1323
No. 286	March 11, 1941, Letter from Rank to Bieze	2173	1324
No. 287	May 7, 1940, Letter from Oakland, of CCM, to Bieze of Yellow	2173	1324
No. 288	June 6, 1940, Letter from Oakland to Bieze	2174	1324
No. 289	June 10, 1940, Letter from Bieze to Oakland	2174	1324
No. 290	September 19, 1933, Letter from Markin to Samuels of Yellow	2174	1324
No. 291	August 24, 1939, Letter from Rank to Hogan and Bieze of Yellow	2175	1325
No. 292	March 15, 1940, Letter from Rank to Hogan and Bieze	2175	1325
No. 293	November 19, 1945, Letter from Bieze to Markin	2175	1326

		Original	Print
No. 294	November 20, 1945, Letter from Markin to Bieze	2176	1326
No. 295	November 27, 1941, Letter from Oakland to Bieze	2176	1326
No. 296	November 30, 1945, Letter from Oakland to Sokoll of Cab Sales	2176	1326
No. 297	April 23, 1929, Minutes of First Directors Meeting of Automotive Sales Corporation	2177	1327
No. 298	April 1929, Agreement between CCM and Automotive	2178	1328
No. 299	April 29, 1929, Letter from Markin of CCM to Automotive	2179	1329
No. 300	August 2, 1930, Letter from A. G. Steckler of TMC to Oakland of CCM.	2179	1329
No. 301	September 26, 1930, Letter from Preston of TMC to Automotive	2179	1329
No. 302	September 29, 1930, Minutes of Directors Meeting of Automotive	2179	1329
No. 303	December 29, 1930, Minutes of Directors Meeting of Automotive	2180	1330
No. 304	March 30, 1931, Minutes of Directors Meeting of Automotive	2180	1330
No. 305	December 21, 1931, Minutes of Directors Meeting of Automotive	2181	1331
No. 306	November 28, 1932, Minutes of Directors Meeting of Automotive with attachments	2181	1331
No. 307	May 21, 1931, Minutes of Directors Meeting of Yellow	2183	1333
No. 308	April 18, 1935, Minutes of Executive Committee of CCM.	2184	1334
No. 309	August 21, 1935, Letter from Rank to Samuels of Yellow	2184	1335
No. 310	August 22, 1935, Letter from Samuels to Rank	2185	1335
No. 311	September 3, 1935, Letter from Hogan, President of Yellow, to Rank, with attachment consisting of letter dated September 3, 1935 from Hogan, President of Yellow to CCM attention: Oakland	2185	1335
No. 312	September 4, 1935, Letter from Hogan of Yellow to Rank, with attachment consisting of letter dated September 4, 1935, from Hogan to CCM, attention: Oakland	2186-A	1337
No. 313	September 10, 1935, letter from Bieze of Yellow, to Rank, with attachment consisting of letter dated September 6, 1935 from Oakland of CCM to Hogan of Yellow	2186-A	1338

		Original	Print
No. 314	November 7, 1935, Letter from R. E. Stouffer, Vice President of Yellow, to Tuttle of CCM	2187	1339
No. 315	November 27, 1935, Letter from Bieze of Yellow to Rank, with attachment consisting of letter dated November 25, 1935 from Oakland of CCM to Yellow	2187	1339
No. 316	December 2, 1935, Letter from Rank of Parmelee to Bieze of Yellow	2188	1339
No. 317	December 26, 1935, Letter from Rank of Parmelee to Oakland of CCM	2188	1340
No. 318	December 30, 1935, Memorandum from Oakland to Rank	2188	1340
No. 319	December 13, 1935, Letter from Samuels of Yellow to CCM	2189	1341
No. 320	December 16, 1935, Letter from Oakland of CCM to Yellow	2190	1341
No. 321	December 23, 1935, Letter from Samuels of Yellow to CCM	2190	1342
No. 322	January 17, 1936, Letter Agreement between Yellow and CCM	2190	1342
No. 323	October 21, 1936, Letter Agreement between Yellow and CCM	2191	1343
No. 324	August 16, 1937, Letter from Oakland of CCM to Markin	2192	1343
No. 325	June 8, 1939, Letter from Frank Magann to Hogan of Yellow	2192	1344
No. 326	June 13, 1939, Letter from Hogan of Yellow to Magann	2192	1344
No. 327	July 1, 1939, Minutes of Directors Meeting of Yellow	2193	1345
No. 328	October 3, 1939, Minutes of Directors Meeting of Parmelee	2194	1346
No. 329	Oct. 19, 1929, Minutes of Directors Meeting of Yellow	2195	1347
No. 330	October 20, 1939, Agreement between Yellow and CCM	2196	1348
No. 331	June 12, 1941, Letter from Adams Oil Company to Yellow	2196	1348
No. 332	June 14, 1941, Letter from Samuels of Yellow to Adams Oil Company	2196	1348
No. 333	August 20, 1945, Letter from Oakland to Bieze	2196	1349
No. 334	August 15, 1945, Letter Agreement between Yellow and Checker	2196	1349
No. 335	September 17, 1945, Minutes of Directors Meeting of CCM	2197	1350
No. 336	August 26, 1936, Letter from Rank to Oakland of CCM	2199	1351
No. 337	January 25, 1937, Letter from Oakland to Sokoll	2199	1351

		Original	Print
No. 338	February 19, 1937, Letter from Rank of Parmelee to Cook of Yellow	2199	1351
No. 339	July 25, 1938, Letter from Oakland of CCM to Bieze of Yellow	2199	1351
No. 340	August 1, 1938, Letter from Bieze of Yellow to Oakland of CCM	2199	1352
No. 341	August 14, 1940, Letter from Rank of Parmelee to Oakland of CCM	2200	1352
No. 342	December 26, 1941, Letter from Oakland to Bieze with attachment	2200	1352
No. 343	January 12, 1942, Letter from Oakland of CCM to Bieze of Yellow	2201	1353
No. 344	June 4, 1943, Letter from Secretary of R. E. Oakland to Bieze of Yellow	2201	1353
No. 345	July 5, 1945, Letter from Knox to Oakland	2201	1353
No. 346	October 30, 1945, Letter from Beize of Yellow to Markin	2201	1353
No. 347	September 5, 1941, Letter from Samuels of Yellow to Oakland of CCM	2201	1354
No. 348	September 6, 1941, Letter from Oakland of CCM to Samuels of Yellow	2202	1354
No. 349	September 8, 1941, Letter from Samuels to Oakland	2202	1354
No. 350	September 9, 1941, Letter from Oakland to Samuels	2203	1355
No. 351	September 11, 1941, Letter from Vice President of CCM to Samuels	2203	1355
No. 352	November 26, 1934, Minutes of Directors' Meeting of Parmelee	2203	1355
No. 353	October 6, 1936, Letter from Oakland of CCM to C. P. G. Fuller	2205	1357
No. 354	October 13, 1936, Letter from Oakland to Fuller	2205	1358
No. 355	August 12, 1938, Letter from Fuller to Rank	2206	1358
No. 356	Journal of the Proceedings of the City Council of the City of Chicago, Illinois, Regular Meeting, Wednesday, September 25, 1929, at 2:00 P. M.	2208	1362
No. 357	January 22, 1934, Memorandum from Markin to Hogan, *et al*	2211	1365
No. 358	April 17, 1934, Letter from Rank to Bieze with attachments consisting of letter dated April 20, 1934 from Bieze to Rank, draft of proposed notice to stockholders, memorandum dated April 14, 1934, from E. M. S. to Rank, and newspaper clipping	2211	1365
No. 359	June 21, 1934, Minutes of Directors' Meeting of Yellow	2213	1367

		Original	Print
No. 360	June 21, 1934, Minutes of Directors Meeting of Chicago Yellow	2218	1373
No. 361	April 11, 1934, Letter from T. B. Hogan to Hinkel	2218	1373
No. 363	March 18, 1935, Memorandum from Rank to Markin	2220	1375
No. 364	August 16, 1935, Letter from Rank of Parmelee to Kirkland, Fleming, Green & Martin, with attachment consisting of letter dated August 16, 1935, from Rank to Board of Directors of Yellow	2221	1375
No. 365	September 19, 1935, Minutes of Directors Meeting of Yellow	2222	1377
No. 366	September 19, 1935, Minutes of Directors Meeting of Chicago Yellow	2223	1378
No. 367	June 14, 1937, Letter from Rank to Board of Directors of Yellow	2224	1379
No. 368	June 15, 1937, Minutes of Directors Meeting of Parmelee	2226	1382
No. 369	June 16, 1937, Minutes of Directors Meeting of Yellow	2227	1382
No. 370	June 23, 1937, Letter from Rank to Samuels of Yellow	2228	1383
No. 371	June 25, 1937, Letter from Samuels to Rank	2228	1383
No. 372	June 26, 1937, Letter from Samuels of Yellow to Board of Directors of Yellow	2228	1384
No. 373	July 15, 1937, Minutes of Directors Meeting of Yellow	2229	1385
No. 374	June 23, 1937, Letter from Rank to Scholz	2230	1385
No. 375	August 9, 1937, Letter from C. P. G. Fuller to "Ben" [Samuels of Yellow]	2230	1385
No. 376	August 18, 1937, Letter from Howard Ellis to Samuels	2231	1387
No. 376(a)	August 27, 1937, Letter from Ellis to Chicago Yellow, Attention Samuels	2232	1388
No. 377	September 15, 1937, Letter from Chadbourne, Hunt, Jaeckel & Brown to Parmelee	2235	1392
No. 379	August 30, 1937, Letter from Samuels to Ellis	2238	1394
No. 380	August 31, 1937, Letter from Ellis to Samuels, with attachment consisting of rough draft copy of proposed Yellow-Checker contract	2239	1395
No. 381	December 2, 1937, Letter from Rank to Samuels	2244	1401
No. 382	December 7, 1937, Letter from Oakland to Sokoll of Checker	2244	1401
No. 383	July 8, 1937, Letter from Sokoll to Rank, with attachment	2245	1402

		Original	Print
No. 384	Listing by Checker of Cabs Withdrawn from Service and not replaced April, May, June, July, August, and September, 1937	2245	1402
No. 385	December 28, 1937, Letter from Sokoll to Markin, with attachment	2246	1402
No. 386	Plaintiff's Interrogatory No. 25	2246	1403
No. 387	Checker's Answer to Plaintiff's Interrogatory No. 25	2247	1403
No. 388	Journal of the Proceedings of the City Council of the City of Chicago, Illinois, Regular Meeting, Wednesday, December 22, 1937 at 2:00 o'clock P. M., Council Chamber, City Hall	2248	1403
No. 389	December 29, 1937, Minutes of Directors Meeting of Parmelee	2250	1406
No. 390	January 6, 1938, Letter from Fuller to Rank	2250	1406
No. 391	January 3, 1938, Minutes of Directors Meeting of Checker	2251	1407
No. 392	January 3, 1938, Agreement between Yellow, Cab Sales, and Checker	2251	1407
No. 393	January 24, 1938, Minutes of Directors Meeting of Yellow	2257	1414
No. 394	August 17, 1939, Letter from Oakland to Markin, with attachment	2258	1415
No. 395	No date, Letter from Laird of Parmelee Motor Fuel to Stouffer of Chicago Yellow	2259	1416
No. 396	August 9, 1945, Letter from Bieze to Oakland, with attachment	2259	1417
No. 398	Index to Volume of Records on Cab Sales, Etc., with certain attached records and tables	2263	1419
No. 398(a)	Index to Volume of Records on Yellow, etc. with certain attached records and tables	2266	1421
No. 398(b)	Index to Volume of Records on Yellow and Chicago Cab Operating Companies with certain attached records and tables	2269	1424
No. 399	November 1, 1944, Letter from Laird of Parmelee Motor Fuel Co. to Markin	2270	1425
No. 400	February 15, 1946, Letter from Edward J. Gorman, Commissioner, City of Chicago, Public Vehicle License Commission to Leonard Bessman, Antitrust Division, with attachment consisting of listing of the number of taxicabs licensed in the City of Chicago from 1929 to 1945, inclusive	2270	1425

		Original	Print
No. 401	February 4, 1943, Letter from Bieze of Yellow to Wyatt of Parmelee	2272	1426
No. 402	February 24, 1943, Letter from Bieze to Rank, with attachment	2272	1426
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No. 422	Opinion by Judge Michael Feinberg entered in Circuit Court of Cook County in *Yellow Cab Company* v. *City of Chicago, et al.*	2283	1438
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No. 430	Oct. 16, 1939, Letter from W. A. Scheeder, General Traffic Manager of Parmelee, to C. P. G. Fuller	2289	1444
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No. 438	Agreement between Parmelee and the New York, Chicago & St. Louis Railroad Company	2294	1448
No. 439	Feb. 5, 1942, Letter from Wyatt of Parmelee to Crowley of Parmelee	2296	1450
No. 440	Nov. 25, 1942, Memo from Landman to Wyatt, with attachments consisting of letter dated Nov. 24, 1942 from Landman to Beggs of Central Passenger Association and Siddall, of Transcontinental Passenger Association, and a letter of Oct. 28, 1942 from Landman of Parmelee to Siddall of Western Passenger Association and Beggs of Central Passenger Association	2297	1451

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No. 441	Feb. 3, 1939, Letter from Fuller to Rank	2298	1453
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		Original	Print
No. 468	Reply of defendant Cab Sales to plaintiff's request for admissions under Rule 36	2309	1464
No. 469	Reply of defendant Checker to plaintiff's request for admissions under Rule 36	2309	1464
No. 470	Plaintiff's request for admissions under Rule 36, as directed to defendants CCM and Morris Markin	2309	1464
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No. 472	Reply of defendant CCM to plaintiff's request for admissions under Rule 36	2310	1464
No. 473	Feb. 18, 1946, Letter from Wendell Berge, Assistant Attorney General, Dept. of Justice, by Melville Williams, to Chicago Yellow, attention Samuels, requesting permission to examine certain records of that company	2310	1464
No. 474	Jan. 22, 1946, Registered letter from Public Vehicle License Commissioner to Yellow Cab Company	2310	1464
No. 475	Jan. 24, 1946, letter from Yellow by Benjamin Samuels, to Edw. J. Gorman, Public Vehicle License Commissioner	2310	1465
No. 476	Jan. 22, 1946, Registered letter from Public Vehicle License Commissioner to Checker Taxi Company	2311	1466
No. 477	Jan. 24, 1946, letter from Checker, by M. M. Sokoll to Edward J. Gorman, Commissioner	2311	1466
No. 478	Feb. 28, 1946, Chicago City Council proceedings, page 5166	2312	1466
No. 479	Feb. 6, 1948, Proceedings of Chicago City Council with reference to authorization of issuance of 950 additional taxicab licenses	2312	1467
No. 480	March 1, 1948, Amendment by City Council of Chicago to regulations governing taxicabs	2314	1470
No. 481	April 18, 1946, Letter from Superintendent of Minneapolis, Minnesota, Department of Licenses, etc. to George B. Haddock, Department of Justice	2315	1471
No. 482	Dates certain cabs of Yellow were last operated prior to January 15, 1946	2316	1471
No. 483	Dates certain cabs of Checker were last operated prior to January 15, 1946	2316	1471
No. 484	Aug. 2, 1933, Letter from M. L. Middlekauff, of Kirkland, Fleming, Green & Martin, to Yellow Cab Company	2316	1471

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No. 485 Aug. 10, 1933, Memorandum of Agreement between Morris Markin and Cord Corporation, signed on behalf of latter by R. S. Pruitt	2317	1472
Plaintiff's exhibits printed in their entirety:		
No. 2—April 5, 1929, Minutes of Directors' Meeting of CCM held at 165 Broadway, New York, New York	2319	1474
No. 3—July 17, 1929, Minutes of Stockholders Meeting of CCM held at 15 Exchange Place, Jersey City, N. J.	2327	1480
No. 4—April 16, 1929, Minutes of First Meeting of Directors of Parmelee held at 68 Wall St., New York, N. Y.	2339	1488
No. 6—April 26, 1929, Minutes of Directors' Meeting of Parmelee held at 68 Wall St., New York, N. Y.	2378	1512
No. 7—April 18, 1929, Minutes of Directors' Meeting of Parmelee held at 68 Wall St., New York, N. Y.	2392	1529
No. 9—May 1, 1931, Agreement between the Transportation Management Corporation and Morris Markin	2465	1574
No. 19—May 8, 1930, Management Agreement between Yellow and T. M. C.	2468	1576
No. 21—January 1, 1932, Management Contract between Yellow and T. M. C.	2478	1582
No. 55—July 19, 1932, Minutes of Directors' Meeting of Checker	2487	1588
No. 91—April 19, 1935, Minutes of Directors' Meeting of Checker	2492	1592
Defendants' exhibits:		
D- 1 Analysis of Automotive Equipment Purchased by Parmelee Since 1929	2498	1597
D- 2 National Automotive Unit Production, 1929-1947	2499	1597
D- 3 Drivers' Arrears of Service Charges Owing to Checker	2501	1599
D- 4 Decree of January 12, 1934 in Action Entitled *Checker Taxi Company* v. *O. Wergin, et al.* in United States District Court for Northern District of Illinois, Eastern Division	2502	1599
D- 5 Decree of February 25, 1946 in Action Entitled *Yellow Cab Company et ano.* v. *City of Chicago, et al.* in Circuit Court of Cook County (Feinberg, J.)	2513	1608

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D- 6	Affirmance on January 22, 1947 by Supreme Court of Illinois of Decree of February 25, 1946 of Illinois Circuit Court in Action Entitled *Yellow Cab Company et ano.* v. *City of Chicago, et al.*	2515	1669
D- 7	Markin Stockholdings, Direct and Indirect, in CCM	2516	1611
D- 8	Markin Stockholdings, Direct and Indirect, in Parmelee	2517	1611
D- 9	Picture of CCM Model K with Specifications	2518	1612
D-10	Minutes of Directors of CCM of July 27, 1933	2519	1613
D-11	Minutes of Executive Committee of Directors of CCM of August 1, 1933	2525	1617
D-12	Minutes of Special Meeting of Board of Directors of CCM of August 14, 1933	2529	1619
D-13	Computation of Cabs Sold by CCM During Periods 1923-1926 and 1929-1947	2540	1628
D-14	Taxicab Licenses and Rates in Cities of Over 50,000 Population in the United States as of April 1, 1947	2541	1629
D-15	Chart of Yellow Organization, 1910-1946	2561	1644
D-16	Excerpt from Certificate of Incorporation of Parmelee	2562	1645
D-17	Opinion of Illinois Supreme Court in Action Entitled *Yellow Cab Company, et al.* v. *City of Chicago, et al.*	2564	1646
D-18	Opinion of Corporation Counsel of City of Chicago of September 11, 1945	2580	1658
D-19	Provisions of Chicago Codes Requiring Cabs to Display Names of Owners on Vehicles	2591	1666
D-20	Recommendation of Public Vehicle License Commissioner for Reduction of Number of Cabs Permitted to be Operated in Chicago, of November 26, 1935	2592	1667
D-21	Recommendation of Public Vehicle License Commissioner to City Counsel of City of Chicago, of April 27, 1934	2593	1667
Statement of points to be relied upon and designation of parts of record to be printed		2595	1671
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No. 46 C 1339

UNITED STATES OF AMERICA, PLAINTIFF,

vs.

YELLOW CAB COMPANY, *et al.*, DEFENDANTS.

Before Judge LaBuy

Tuesday, June 8, 1948,
10 o'clock a. m.

Court met pursuant to adjournment.

Present:

Mr. Hotchkiss
Mr. Williams
Mr. Lynton
Mr. Ginsberg
Mr. Fuller
Mr. Climenko

The CLERK: The case on trial.

The COURT: Is counsel ready to proceed?

Mr. HOTCHKISS: Ready, your Honor.

The COURT: Proceed, please.

Mr. LYNTON: If your Honor please, in yesterday's session, there was an incorrect transcription of an answer to a question, and I believe the government consents to the correction. The question was asked of Mr. Oakland on direct examination.

1553 Mr. HOTCHKISS: What page?

Mr. LYNTON: —was asked of Mr. Oakland on direct examination at page 1,488 of the transcript:

"Has CCM ever had a contract for exclusive purchases by Yellow?"

Mr. Oakland answered, "No".

The transcript shows the answer to be, "Yes", and the government consents that the answer be corrected to "No", is that correct?

Mr. HOTCHKISS: That is correct.

Mr. LYNTON: And I also in that connection refer to page 1,500 of the transcript where the government, on cross examination of Mr. Oakland—

Mr. HOTCHKISS: We are not disputing that.

Mr. LYNTON: Yes. I just want the record to show the status of the record yesterday before we correct it today.

Mr. HOTCHKISS: Are you making a correction on page 1,500?

Mr. LYNTON: I am making a reference, Mr. Hotchkiss.

Mr. HOTCHKISS: Very well.

Mr. LYNTON: On page 1,500 of Mr. Oakland's ex-
1554 amination, on cross examination, the question was asked by the government:

"I believe you stated that Yellow in Chicago had no contract to buy cabs exclusively from CCM, is that correct?"

And the answer, "That is correct."

I read that to show the inconsistency in the transcript, and the consistency in the answers as corrected.

There is one other slight correction we would like to make at this time. On page 1,464 of the transcript, a question was asked:

"What did Mr. Markin receive for his Motor Cab stock?"

The answer given was:

"58,447 shares of Checker Cab Manufacturing Corporation."

The transcript is in error in reporting the answer to be 58,437. As stated, the correct figure is 58,447.

I may say also that neither the defendants nor the government have read the transcripts of the previous sessions with a view to making oral corrections, and in the event it should ever become necessary to make them, both of us have informally discussed an arrangement for ac-
1555 complishing that end.

BENJAMIN SAMUELS, a witness on behalf of the defendants, resumed the stand and testified as follows:

Cross Examination.

By Mr. HOTCHKISS:

Q. Mr. Samuels, will you state what was the condition of the Yellow Cab fleet operating in Chicago in the year 1928? A. Pretty well run down.

Q. How old were the oldest cabs in the fleet at that time? A. I would not know.

Q. Approximately? A. Approximately, I would say, about four years.

Q. And those were the cabs which had been purchased from the Yellow Cab Manufacturing Company, is that true? A. That is right.

Q. Now, I believe you testified in substance that you

had first heard, somewhere in 1928, about a possible amalgamation of operating companies, is that true?

1556 A. I didn't make any such statement.

Mr. LYNTON: I object to that. There is no such testimony.

The COURT: Will you read the question?

(Last question and answer read by the reporter.)

Mr. LYNTON: I will withdraw the objection in view of the fact that the witness has answered the question.

By Mr. HOTCHKISS:

Q. Mr. Samuels, when did you first hear about the possibility of a company which subsequently became known as the Parmelee Transportation Company being organized? A. I would say that was in late 1928 or the early part of 1929—I want to correct that. I would say about 1929.

Q. The early part of 1929? A. The early part of 1929.

Q. From whom did you secure that information? A. I don't remember.

Q. Did you know Mr. Miller at that time? A. I certainly did.

Q. Were you having conversations with him at

1557 that time? A. No, not about this matter.

Q. Not about this matter? A. No.

Q. At that time, were the officers of Yellow Cab Company having discussions with respect to replacing the existing fleet? A. I don't think so, not in 1929.

Q. You are speaking now of the early part of 1929? A. Early 1929, no.

Q. How about 1928? A. In 1927 and 1928, that matter was discussed.

Q. In 1927 and 1928, but not in the early part of 1929; you were not discussing it? A. No, and the reason I make that statement, in the latter part of 1928, we began considering the possibility of buying passenger cars, standard passengers cars, and that is when we purchased those ten Buicks.

Q. Can you fix the time a little more definitely with respect to your purchase of the Buicks, just when you purchased them? A. No. It was in 1928.

1558 Q. Sometime in 1928? A. I would say the latter part of 1928.

Q. But by the early part of 1929, the officers of the company were not giving consideration to the question of replacing its Yellow Cab fleet? A. Well, if you mean by that that we were ready to go ahead and buy some, I would

say what we really were considering was the question of whether or not we ought to buy any at that time, in 1928 and the early part of 1929.

Q. Was it essential in the early part of 1929 that you replace the fleet? A. I would say so, yes.

Q. Had you made a study of the cabs made by the Checker Cab Manufacturing Company? A. Yes. Mr. Hogan and Mr. Stouffer had made a trip over to the factory at Kalamazoo for that sole purpose.

Q. When was that? A. I would say that was in 1928.

Q. The latter part of 1928? A. To the best of my recollection, yes.

Q. When, if you know, did Mr. Hertz commence conversations with reference to the sale of the stock which
1559 he owned in the Chicago Yellow? A. I would say that was initiated about the same time as the sale of Yellow Cab Manufacturing Company to General Motors.

Q. It started about that time? A. Yes.

Q. What year was that? A. I think it was 1925.

Q. It was initiated with what persons at that time? A. I didn't get the question.

Q. With whom was he having these conversations at that time? A. Well, in the office between myself and Mr. Grey, who was our general manager and president, and Mr. Hertz had his office with us.

Q. Now, at what time did Mr. Hertz begin having conversations with Sisto & Co.? A. I don't know.

Mr. LYNTON: I object to that question.

Mr. HOTCHKISS: If he had any such conversations.

Mr. LYNTON: Excuse me. I have no objection so long as the question is coupled with "if."

By Mr. HOTCHKISS:

Q. Did he have any such conversations with
1560 Sisto & Co. with respect to the sale of his stock? A. I don't know a thing about his talks with Sisto. I never heard of Sisto.

Q. What I am asking you, did he have any, yes or no, or don't you know? A. I don't know.

Q. You don't know? A. No.

Q. Did he have any talks with Mr. Ernest Miller with respect to the sale of his stock? A. I don't know.

Q. Did he have any talks with Mr. Markin? A. I certainly don't know about that either. I am pretty sure that he did not.

Q. He did sell his stock, though, or a block of his stock? A. He sold all of his stock, but I don't know to whom that stock was actually sold.

Q. When was that stock sold? A. I think it was April, 1929.

Q. April, 1929? A. Yes.

Q. Now, did Yellow about that time order any taxicabs from Checker Cab Manufacturing Com-
1561 pany? A. I don't know the exact date. We did. We bought cabs from Checker Manufacturing in the early part of that year.

Q. Do you recall whether it was before or after the sale of the Hertz stock? A. I don't remember the exact date. You have some records there that would show the exact date. I haven't got them.

1562 Q. Did Mr. Hertz advise you concerning any conversations he might have had with Mr. Miller on the sale of his stock? A. Yes.

Q. And what did he tell you? A. Well, after the deal was made in New York through Mr. McCullough—

Q. And when was the deal? A. I don't know. After the deal was made in New York by Mr. McCullough Mr. Hertz came to me and said that he had entered into some negotiations to sell all of his interest in Chicago Yellow and wanted to know if I was willing to sell at the same price my interest.

Q. That you were? A. Yes.

Q. And did you have an interest at that time? A. I did.

Q. And how large an interest was that? A. I think it was somewhere between five hundred and one thousand shares.

Q. And did you sell? A. I did not.

Q. You held on. You used the words "the deal,"
1563 in conversations with reference to the deal. Were these conversations with Mr. Hertz prior to the time this stock was sold or after? A. I don't remember—

Q. You don't remember? A. —the exact sequence there.

Q. Mr. Samuels, did Mr. Hertz discuss with you the question of whether Yellow should buy its cabs from the Checker Cab Manufacturing Company— A. He did not.

Q. —in the event this plan went through? A. There was no such conversation.

Q. Was there any conversation with Mr. Hertz concerning the possibility that Yellow might buy cabs from CCM? A. With me?

Q. Yes. A. No.

Q. Was there any conversation between Mr. Hertz and any other officer of Yellow? A. Not as far as I know.

Q. Were there any conversation between you and Mr. McCullough on that subject? A. There was not.

1564 Q. Was there any conversation between Mr. McCullough and any officer of Yellow? A. Not as far as I know. I was only the Assistant Secretary at that time for the purpose of signing stock certificates. I really was not an officer of Yellow or Chicago Yellow.

Q. You were at that time an employee? A. That is right.

Q. Yes. A. Of Yellow.

Q. What was your salary at that time? A. I don't recall. I think it was $12,000. Per annum.

Q. Did Yellow buy any taxicabs through the Automotive Sales Company in 1929? A. In nineteen what?

Q. 1929. A. Well, I have no recollection of that particular name.

Q. You have no recollection of that name? A. No.

Q. Yellow Cab Company secured delivery on certain cabs from CCM in 1929, is that correct? A. I believe so, yes.

1565 Q. And it operated those cabs in Chicago? A. What?

Q. And it operated those cabs on the streets of Chicago? A. Do you mean Yellow Cab Company?

Q. Yes. A. It certainly did.

Q. Were you satisfied with the operation of those cabs? A. Very much.

Q. Mr. Samuels, I believe you testified you have been with Yellow since—what was it, 1919? A. 1918.

Q. Do you know when the Checker Taxi Company started operations? A. I do not. I imagine it was in the early twenties, if that would be an answer to you.

Q. In the early twenties, you believe? A. Yes.

Q. Do you know the approximate number of cabs they were operating in the early twenties, just the approximate number? A. No. It wasn't an awful lot because it was a much smaller amount than what we were operat-

1566 ing and, as I recall it, in the early twenties we started with approximately 500, and by 1928 we had gotten as high as 2850. Checker in the meantime had grown from a very small company—

Q. Smaller than Yellow? A. Much smaller.

Q. Smaller than the 500? A. Yes, much smaller. To about 1950 cabs.

Q. Would you say it started at around 100 cabs? A. I wouldn't know.

Q. But by 1928 it had how many cabs, did you say? A. 1950, as near as I can recall.

Q. 1950? A. Yes.

Q. And Yellow had how many again? A. Well, the peak was 2850. I think we were down to about 2750 in 1928, and the total cabs in Chicago at that time I would say was around 7700.

Q. In that period of time? A. Yes, at the time of the peak.

Q. About 1928? A. About the time of the peak it was 7700.

1567 Q. What was the year of the peak? A. 1927, early 1928.

Q. At the time of the peak, Mr. Samuels, what taxicab company in Chicago was your principal competitor?

Mr. Lynton: I object to the form of the question. I think it asks for a conclusion.

The Court: Sustained.

By Mr. Hotchkiss:

Q. Mr. Samuels, at the time of this peak, what taxicab company in Chicago was operating the largest number of taxicabs other than Yellow? A. Outside of Yellow?

Q. Yes. A. In 1928 and 1927?

Q. Yes. A. Checker. Checker Taxi Company.

Q. Mr. Samuels, you have testified concerning certain aspects of a loan made by Benzoline to Cab Sales in or about 1931. Is that correct? A. I think that is correct as to date. I certainly testified about the loan.

Q. At the time that loan was made, did you know who were the principal owners of the stock of Cab Sales?

1568 A. No, I did not.

Q. What was your position in Yellow Cab? A. I think at that time I was already made a director and also vice-president.

Q. In Yellow? A. Yellow Cab.

Q. Did you make any inquiry at that time into the question of who owned Cab Sales? A. The only interest I had was we were going to get a majority—

Q. I asked you— A. I did not.

Q. Do you know whether any other officer of Yellow or Chicago Yellow made such an inquiry? A. I do not.

Q. Do you know whether any other officer of Yellow or Chicago Yellow knew who owned the stock of Cab Sales at that time? A. Well, we knew we were going to get a majority of the stock—

Q. Did you— A. As security. That is the only thing that I knew and they knew.

1569 Mr. Hotchkiss: I will ask the reporter to read the question back to the witness.

(Question read.)

The Court: You may answer.

The Witness: I thought I answered it.

By Mr. Hotchkiss:

Q. Will you answer it? A. What?

Q. Will you answer that question? A. Not as far as I know.

Q. Not as far as you know. I think you testified that at that time you knew the purpose for which that loan was being made? A. Yes, sir.

Q. Was that loan to be made for the purpose of enabling Cab Sales to buy certain Checker stock? A. It was made to enable us to put out some money at interest. It was made so that we could get security, a majority of the stock of Checker Taxi Company. It was made so we could go into the matter of making the contract for the sale of gasoline and it was made for the purpose of putting our business and the taxicab business in general on a safe,

1570 stable basis instead of a roughhouse basis that it was. That was the purpose.

Q. At that time, Mr. Samuels, did you know what Cab Sales was going to use that loan for? A. Certainly.

Q. And what was that purpose? A. To acquire the stock of Checker Taxi Company which they were going to put up as security.

Q. And how much stock were they going to acquire with that loan? A. I don't know, except that I knew that we would have a majority of all of the stock of Checker Taxi Company as security for our loan. Whether they were going to buy more than that or less than that, I don't know.

Q. You knew that a majority of the Checker stock was involved? A. That is right.

Q. Was that loan discussed with any of the officers or with the manager of Transportation Management Company? A. Well, may I put it this way? It was discussed with Ernest Miller.

Q. And what position did Ernest Miller hold in the

1571 Transportation Management Company? A. I believe at that time that he was president of Parmelee and also the Chairman of our Board.

Q. And what was his position with the Transportation Management Company? A. He was our adviser.

Mr. LYNTON: He just stated—

Mr. HOTCHKISS: No. He said Parmelee.

The WITNESS: He was representative of the management organization.

By Mr. HOTCHKISS:

Q. You did have a discussion with him? A. Yes.

Q. Will you state the substance of that discussion? A. Well, he was the Chairman of our Board and he suggested it would be a good thing for the industry and a good thing for Chicago Yellow and Yellow, which had a lot of money which was not being invested and could not be invested at anywhere near reasonable rates—

Q. Excuse me.

Mr. LYNTON: I suggest the witness be allowed to answer.

By Mr. HOTCHKISS:

1572 Q. Will you proceed? Excuse me. A. To make an investment in the stock of—I mean, make an investment so that they—he meant Mr. L'Amoreaux, whose name was mentioned, might be in a position to acquire this Taxi stock from the McLaughlin interests.

Q. Now, you mentioned Mr. L'Amoreaux. A. Yes.

Q. What was his position with reference to Cab Sales? A. I don't know what his position was except that he was the attorney. I don't know just exactly—

Q. He was the attorney for whom, do you know? A. He seemed to be the attorney for the Parmelee interests.

Q. Benzoline made this loan, is that correct? A. That is right.

Q. Did Benzoline have the money to make the loan? A. I don't believe it did.

Q. Where did it secure the money from? A. Borrowed it from Chicago Yellow, as I recall.

Q. Chicago Yellow? A. Either Yellow or Chicago Yellow.

1573 Q. Yes. Now, subsequently, Mr. Samuels, isn't it true that Waverly Company made a loan— A. It did.

Q. To Cab Sales? A. It did.

Q. And did you at that time know for what purpose Cab Sales was going to put that loan? A. I did.

Q. And what was that? A. To acquire an additional amount of Checker Taxi stock so that they would be able to deposit with us about—over 90 percent of the Taxi stock as security.

Q. As a matter of fact, it was in the vicinity of 97 per-

cent, was it not? A. Yes. I would say you are right about that.

Q. Did Waverly have enough money to make this loan? A. In its treasury?

Q. Yes. A. I don't think it did.

Q. Isn't it a fact, Mr. Samuels, that it borrowed $180.00 from Yellow? A. One hundred and eighty thousand.

1574 Q. $180,000 from Yellow. A. I believe that is right.

Q. And it made a loan of $200,000? A. No. It loaned $200,000.

Q. It loaned $200,000. Mr. Samuels, do you know that Waverly loan was discussed with any officer or with the general manager of Transportation Management Company? A. It must have been discussed, and I am a little bit hazy as to just with what particular individual it was discussed. My offhand recollection would be it was discussed with Mr. Miller, but I am not sure whether he had died in the interim or not. If he was dead at that time then he was out of the picture, and Mr. L'Amoreaux was the man we would have discussed it with. But it was either one of those two.

Q. But it was either one or the other of those two persons you would have discussed it with? A. Yes.

1575 Q. And both of them had been connected with the Transportation Management Company as of about that time, is that correct? A. Yes. I think one succeeded the other. That is the way I have it in my own mind.

Q. Mr. Samuels, at that time did you know the corporate relationship between Transportation Management Company and the Parmelee Transportation Company? A. I did not.

Q. You did not? A. I did not, no.

Q. Do you know whether any of the officers of Yellow, any of the other officers of Yellow, at that time knew of the corporate relationship between Transportation Management Company and the Parmelee Transportation Company? A. They may have. I don't know.

Q. You never discussed that with the other officers? A. I never did.

Q. Mr. Samuels, I refer you now back to the loan which Benzoline made to Cab Sales. I ask you whether there was any discussion among the officers of Yellow

1576 on the question of having the loan made from Yellow directly to Cab Sales instead of having the loan made by Benzoline to Cab Sales and having Benzoline bor-

row the money from Yellow? A. There was quite a lot of discussion.

Q. And will you state in substance what that discussion was? A. The discussion centered around the proposition of several things. First, the matter of investing money purely, and whether or not we could also use as a means of profits the sale of gasoline to the Checker fleet. That was probably the most vital part of the whole situation. And, from the standpoint of the other things that I mentioned before; the gasoline deal was the most important, vital part, in addition to the proposition of having as security for our loan a majority of all of the stock of Checker Taxi Company. Besides the investment feature and besides the other feature that I told you about the other day, or yesterday.

Q. Why didn't Yellow directly make the loan? A. We figured that the way to build up the contract with Checker was to have the contract for the Benzoline sale,
1577 gasoline sales, tied up with that loan.

Q. Now, Mr. Samuels, Waverly made a loan to Cab Sales, didn't it? A. That is right.

Q. Was Waverly selling gasoline? A. It was not.

Q. Waverly borrowed $180,000 of that $200,000 amount of the loan from Yellow? A. Yes.

Q. Why didn't Yellow make the loan directly? A. I don't know what the reason was except that that was the advice of our counsel at the time.

Q. Did Yellow directly or indirectly make any further loans to Cab Sales? A. Not that I know of.

Q. Mr. Samuels, I ask you whether in or about 1942 Cab Sales asked Yellow or Chicago Yellow for a loan of $100,000? A. 1942?

Q. Yes. A. I don't know of any such request.

Q. You never heard of any such request? A. Not that I can recall.

Q. You don't recall Yellow or Cab Sales loan-
1578 ing $100,000 to Cab Sales? A. In 1942?

Q. Yes. A. I have no recollection of it.

Q. I ask you, Mr. Samuel, whether this will refresh your recollection. I read from Government's Exhibit 126, consisting of minutes of the proceedings in a special meeting of the board of directors of Cab Sales and Parts Corporation, held July 24, 1942.

Mr. Lynton: Was Mr. Samuels present at that meeting?

Mr. Hotchkiss: I am asking this for the purpose of refreshing the witness' recollection.

Mr. LYNTON: You are describing the document. I am asking a question with respect to the description.

By Mr. HOTCHKISS:

Q. I read:

"That this corporation shall borrow from Chicago Yellow Corporation, Inc. the sum of $100,000 and shall execute its installment note payable to the order of Richard Clauson bearing the date of July 24, 1942,

1579 payable in the following installments: $5,000, due September 1, 1942,"

and thereafter is a list of those installment dates,

"and to secure the payment of said loan this corporation shall execute and deliver a chattel mortgage conveying 200 of its taxicabs to said Richard Clauson."

Does that refresh your recollection?

A. I don't recall it. It may have happened but I don't recall it.

1580 Q. Who is Richard Clauson? A. Let me see the name the way you have spelled it. He is one of the employees of Yellow Cab Company.

Q. What position does he occupy as an employee? A. He is chief cashier.

Q. Did he hold such a position in 1942? A. Yes.

Q. Mr. Samuels, I believe that yesterday you testified in substance that the transaction or transactions wherein Parmelee sold certain stock to Yellow—certain Chicago Yellow stock to Yellow with an option to repurchase, was in the nature of a loan from Yellow? A. It was.

Q. Mr. Samuels, at the time that loan was made, did you, as an officer of Yellow, know for what purpose Parmelee was going to use this loan? A. Yes, in a general way. I did not know what the specific reason was, but in a general way I did.

Q. With whom had you discussed that question of the use to which the loan was going to be put?

Mr. LYNTON: If your Honor please, I think the

1581 question yesterday was asked, and the witness answered his first question by saying it was in the nature of a loan. I do not think it is a matter of any moment but I suggest that the question be put with respect to temporary financing rather than the characterization of a loan. Technically it was not a loan.

Mr. HOTCHKISS: Your Honor, the witness has testified—

The COURT: Well, the court understands what the witness said. I do not think there is anything to argue about.

Mr. HOTCHKISS: What was the last question?
(Last question read by reporter.)

By the WITNESS:

A. I don't recall. If Mr. Miller was alive, it was with Mr. Miller. It may have been with his successor. I think Mr. Miller had already died.

By Mr. HOTCHKISS:

Q. Who was Mr. Miller's successor? A. Mr. Rank. I may say as far as our company was concerned, he represented the Management Corporation.

1582 Q. And Parmelee, or the Management Corporation anyhow? A. Yes.

Q. Now, what were you told with respect to the use to which this loan was to be put?

Mr. LYNTON: I object to the form of the question. He has not testified that he was told anything. You asked him whether he knew, and he said he knew. It is assuming a state of facts not in evidence.

The COURT: Sustained.

By Mr. HOTCHKISS:

Q. What did you know? A. What?

Q. What did you know about it? A. Well, I didn't know anything except what I was told.

Q. What were you told? A. I was told they needed money for temporarily tiding them over some of their financial difficulties.

Q. In what year was this transaction worked out? A. I don't remember. You have got the whole record there. It is all a matter of record.

1583 Q. You don't remember? A. No.

Q. Was this transaction discussed by the members of the board directors of Yellow? A. It certainly was.

Q. And by the members of the board of Directors of Chicago Yellow, was it? A. We always sat together. We never had a board meeting of Yellow that the directors of Chicago Yellow did not sit in. When Chicago Yellow directors met, Yellow directors always sat in.

Q. So that they were all informed concerning this transaction, is that correct? A. Yes, sure. They knew all about it.

Q. Mr. Samuels, during the course of these board meetings, was the policy of making this loan discussed? A. Certainly.

Q. Now, during the course of these board meetings, Mr. Samuels, did the members of the board discuss the question of Parmelee's ownership of stock in Chicago Yellow? A. I don't know what you mean by that question. This was stock that Parmelee owned in Chicago Yellow that we were going to acquire. Does that answer your ques-
1584 tion? I don't know what you mean.

Q. Did they discuss the general over-all holdings of Parmelee in Chicago Yellow? A. I don't know what you mean by that question. When we were talking about making this deal, of buying stock with an option to repurchase, we certainly discussed how much interest they had. If you make your question a little clearer, I will try to give you an answer.

Q. So that your discussion was had with reference to your knowledge of the over-all holdings of Parmelee in Chicago Yellow? A. Sure, we knew what their interests were. The stock records were always there. We knew down to one share how much they had.

Q. Mr. Samuels, during this period, the general period of time, did Chicago Yellow or Yellow make any loans to taxicab operating companies other than those which were affiliated with Parmelee?

Mr. LYNTON: I object to the form of the question. My objection is directed to the word "affiliated."

Mr. HOTCHKISS: All right, I will go through in detail.

Mr. LYNTON: You withdraw the question then?
1585 Mr. HOTCHKISS: I withdraw the question, and I will go through in detail.

Q. During this period of time—

The WITNESS: Will you give me the time? You say, "this period." I don't know what that means.

By Mr. HOTCHKISS:

Q. This period of time when this deal with respect to the loan we have just been discussing, the loan from Yellow to Parmalee, was made.

Mr. LYNTON: I hope government counsel will use the word "transaction" instead of "loan."

Mr. HOTCHKISS: The use of the word "loan" refers to the sale and repurchase arrangement.

Mr. LYNTON: Do you define your use of the word "loan" to mean that? If so, I have no objection.

Mr. HOTCHKISS: Is there any objection to the question?

Mr. LYNTON: Yes, I object to the form of the question.

Mr. HOTCHKISS: The witness has testified that this was a loan.

The COURT: What is your understanding of what constituted that arrangement? If it was not a loan, what was it?

1586 Mr. LYNTON: It was a sale coupled with an option to repurchase.

Mr. HOTCHKISS: Are you challenging your witness on what he testified to?

Mr. LYNTON: I am not challenging anybody except you.

Mr. HOTCHKISS: Your witness testified—

Mr. LYNTON: Let us not argue about it. I made an objection to it. If you want to use the word "loan" to mean "loan" in its legal sense—

The COURT: Well, technically, the objection is well founded. I don't understand that it was a loan. I sustain the objection.

1587 Mr. HOTCHKISS: For my own information, will you read the last question?

(Question read.)

By Mr. HOTCHKISS:

Q. Now, Mr. Samuels, during the period from 1931 through 1933, did Yellow or Chicago Yellow make any loans to companies other than Cab Sales and Parmelee? A. I don't recall any.

Q. Following that period, did they make loans to cab operating companies? A. Yes.

Q. Other than Parmelee? A. Yes.

Q. Cab Sales, Yellow of New York, National Transportation, Inc.? A. Now you are asking me a question. I don't get the point of it.

Mr. HOTCHKISS: Will you read it?

(Last question and answer read by the reporter.)

The WITNESS: I answer part of it, "Yes." Then you went on with another question, and I said, "Yes".

1588 May I have a new question so that I know what you are talking about?

By Mr. HOTCHKISS:

Q. Now, this question, leaving your "Yes" out, and consider the sequence of the companies I have named, did Yellow or Chicago Yellow make loans to companies other than those I have named during the period following 1932 and 1933? A. Yes.

Q. What companies? A. I remember to the five cent cab company of Evanston; I know of a loan to the Radio

Cab of Evanston; I know of a loan to the Jitney Cab of Evanston.

Q. To any other companies? A. None that I recall at this moment. It was all tied up with gasoline contracts.

Q. Mr. Samuels, I think you have testified that Yellow purchased cabs from Checker Cab Manufacturing Company in 1929; is that correct? A. I believe that is right.

Q. You testified that in 1929 or thereabouts, you were satisfied with the operation of those cabs, is that
1589 correct? A. Very much so.

Q. Were you satisfied with the operation of those cabs in 1930? A. Yes.

Q. Were you satisfied in 1931? A. Yes.

Q. In 1932, were you satisfied? A. Yes. Now, you are talking about the operation of the cabs, are you?

Q. Yes, with the merit of those cabs. You were satisfied in 1932? A. As operating cabs?

Q. Yes. A. Yes. The answer is yes, definitely.

Q. In 1933, were you still satisfied? A. Yes.

Q. Were you equally satisfied in 1934? A. No question about it.

Q. What position did Mr. Frank D. Fulton occupy with reference to Yellow and Chicago Yellow in 1934? A. I don't remember the date. He was one of our directors at one period of our history.

1590 Q. Now, I read you a letter, Government's Exhibit 176—

Mr. Lynton: Are you going to put a question on that letter?

Mr. Hotchkiss: I am going to put a question on that letter.

Q. It is dated December 17, 1934. It is directed to the Board of Directors of Yellow Cab Company, Chicago, Illinois:

"Dear Sirs:

"I have recently been in a number of cities and made some investigation in each of the taxicab situation.

"I find that the smaller cars are generally in use and I think are more satisfactory than the heavy and cumbersome cars which are being used in Chicago and New York.

"I think the officers of this company should immediately ascertain what they can purchase a substantial unit of modern, reasonably sized cars for and such cars should be purchased within the near future to replace our obsolete cars on the street.

1591 "I think the directors should adopt a policy of replacement and that this policy should be formulated and carried out without an idea of competition, but with the idea of doing the 'horse sense' thing that good business judgment demands should be done."

Was that letter called to the attention of the Board of Directors of Yellow? A. It certainly was.

Q. Was it discussed? A. It certainly was.

Q. Was a Mr. Keller a member of the Board of Directors at that time? A. I don't recall. Paul Keller?

Q. Yes. A. He was a member of our Board during this period. I don't know whether it was the same time or not. You have those records.

Q. The records show that he was. A. Well, if you say he was, then I will agree to it.

Q. Were you present during this board meeting when this letter was discussed? A. I certainly was, very much so.

1592 Q. Do you recall whether Mr. Keller was present? A. Well, if he was on our board, he certainly was present.

Q. Do you recall what if any opinion Mr. Keller expressed with reference to this letter? A. No, I do not.

Q. Do you know whether Mr. Fulton's views came to the attention of Mr. Markin? A. That I don't know.

Q. Was Mr. Markin present at any of these board meetings at which this letter was discussed? A. I would say no.

Q. Was any representative of Parmelee Company present at the board meetings, any officer of Parmelee present at any of the board meetings? A. What is the date of the letter?

Q. December 17, 1934. A. I would say Mr. Rank was present.

Mr. Lynton: May I ask an interlocutory question?

Was Mr. Rank present in his capacity as a representative of Parmelee?

The Witness: No, one of our directors.

Mr. Hotchkiss: May I suggest that this question could well wait for redirect?

1593 The Court: The suggestion is good.

Mr. Hotchkiss: And I object.

The Court: Objection sustained.

Mr. Lynton: I move to strike out the answer of the witness, and I object to the question on the ground that the question is ambiguous and it is leading, and does not indi-

cate whether or not the person present at that meeting was present in his capacity of being a director of Yellow or whether he was present in the capacity of being a representative of Parmelee.

The COURT: Overruled. You may find out on redirect.

Mr. HOTCHKISS: Will you read the last question, please?

(Last question and answer read by the reporter.)

By Mr. HOTCHKISS:

Q. Now, Mr. Samuels, the next is a foundation for a question. I read—

Mr. LYNTON: Why don't you show him the letter?

Mr. HOTCHKISS: —Government's Exhibit 177, which consists of a letter from Mr. Hogan to Mr. Frank Sawyer, dated December 26, 1934.

1594 Mr. LYNTON: If your Honor please, I object to the reading of the exhibit. I think if the witness is to be shown a document for the purpose of refreshing his recollection, that he should be shown the document.

Mr. HOTCHKISS: I am not showing it for the purpose of refreshing his recollection.

The COURT: It is within the discretion of counsel whether he wishes to read the letter or show the letter to the witness, or whether he wishes to refresh the witness' recollection by making reference to excerpts from the exhibit.

By Mr. HOTCHKISS:

Q. I read:

"We will have to buy some new equipment in 1935, and would like to get your ideas on equipment.

"As you know, M merged the two outfits in Cleveland. The Chevrolets are out-booking the Checkers about $3 per car per day. They have a little over 200 cars in each outfit. They double shift all their cars and book on the average of $13 to $14 a car per day,

1595 —they have reduced the number of cars in the town substantially. We are working approximately everything single shift except on Saturdays and days prior to holidays."

1596 Mr. LYNTON: What is your question on that, Mr. Hotchkiss?

Mr. HOTCHKISS: Must I put the question immediately?

Mr. LYNTON: Oh, I thought you were finished with your reading.

By Mr. HOTCHKISS:

Q. "The San Francisco and Los Angeles fellows were in a couple of weeks ago and bought a couple hundred De-

Sotos. They got a lot of extras with the car, partition, etc., and bought them for $900 delivered to Frisco and Los Angeles. That would mean $785 Chicago.

"These fellows out West are considered pretty smart operators. At least they always gave me that impression when I was in California a couple of years ago. We just cannot pay as much as we have been paying for cabs, and if we are going to be the first class cab company, will have to come out with the stylish modern looking car. This thing of running cars four or five years is a tough job."

Mr. Samuels, did Mr. Hogan ever discuss with you the general subject matter of this letter?

1597 Mr. LYNTON: I object to the form of the question. I move to strike out the entire reading because the government is not putting a question based upon that letter. Counsel is putting a question based upon a topic.

The COURT: Overruled.

By the WITNESS:

A. No.

By Mr. HOTCHKISS:

Q. He never discussed it? A. That is what I said.

Q. What was Mr. Hogan's position in Yellow and Chicago Yellow at that time? A. President.

Q. December, 1934? A. President.

Q. I ask you, Mr. Samuels, whether it is not a fact that in January of 1936 Mr. Markin asked you to use your influence to have Mr. Fulton and Mr. Keller taken off the board of directors of Yellow? A. I don't recall just how that came about. My recollection is the message came from Mr. Fuller.

Q. I hand you Government's Exhibit 179 and ask

1598 you if that refreshes your recollection? A. It may. That does.

Q. All right. What is your present recollection? A. That Mr. Markin called me long distance and asked me.

Q. During the course of Mr. Martin's long distance telephone conversation with you, did he at any time mention Mr. Fulton's letter of December 17th? A. He did not. No.

Q. Did he ever make any reference to that letter of December 17th? A. I don't think he knew anything about the letter, never made any reference in any conversation with me.

Q. Did he ever make any reference to Mr. Fulton's views toward cabs? A. No. The only subject that was discussed in connection with that matter of resignation was that he

expressed the opinion that it would be better for Yellow and Chicago Yellow to have on the board practical taxicab operators rather than, as he expressed it, men who had no such experience.

Q. Mr. Samuels, it is true, is it not, that you objected strenuously to making that replacement of Fulton
1599 and Keller? A. My objection was entirely on a different proposition. I said: "I didn't put those men on the board, and if you put them on the board or were instrumental in having them placed on the board, then you tell them why they should resign."

I certainly wasn't going to tell men to resign that I had no reason to ask to resign. That was the way I put it, and that is in my letter, as I recall it.

Q. Mr. Samuels, I call your attention to Government's Exhibit 184, consisting of a telegram from Markin to Corporation Trust Company, dated May 14, 1935, attention Benjamin Samuels. It reads:

"Protest as stockholder of Waverly your voting stock to re-elect your nominees to the Chicago Cab board and will hold you personally responsible for any damage to Waverly or its stockholders."

I hand you a photostatic copy of the telegram and ask you whether you recall receiving the original of that telegram. A. Yes, I recall receiving that message at the annual board meeting.

Q. Who were "your nominees," as referred to in that letter?

1600 The Witness: All the—

Mr. Lynton: I object to that. It asks this witness to testify as to the construction of a telegram.

The Court: He may answer.

The Witness: I don't know now. The nominees, if you mean what I understand by the word "nominees," were the directors of the corporation who were then directors of the corporation, and whose names were listed in the proxy statement that went to all stockholders. I held the proxy of any number of stockholders authorizing me to vote all of that stock for those named in the proxy statement. What those names are, I don't recall offhand.

By Mr. Hotchkiss:

Q. Now, I ask you whether Morris Markin at that time had nominees other than yours for certain positions on the board of directors of Yellow?

Mr. Lynton: I object to the form of the question. It assumes a state of facts not in evidence.

The COURT: No, I think the question calls for evidence.

Mr. LYNTON: The portion I object to is "than your
1601 nominees." We have characterizations here as to what are nominees.

The COURT: He may answer the question.

The WITNESS: I never heard of them. Now, you are referring to the time I got the telegram.

By Mr. HOTCHKISS:

Q. About that time? A. No. At the time I got that telegram, I had no knowledge of any nominees other than ours.

Q. And when you say "ours,"— A. Those who were mentioned in the proxy statement that went out to all stockholders.

Q. When did that proxy statement go out, do you recall? A. Well, it is statutory. I don't know, thirty or forty days before the annual meeting of the corporation, and the corporation met in May, but I imagine it was the same day of that telegram. Isn't that May?

Q. That is May 14th. A. That probably was the very day of the annual meeting in New York.

Q. And it would be your best recollection, would it not, that the proxy statements went out earlier? A. Oh sure, they had to go out under the law.

1602 Q. Did those proxy statements list the proposed nominees for positions on the board of directors? A. Yes.

Q. Who prepared the proxy statement in 1934? A. Our general counsel, Kirkland, Fleming, Green, Martin & Ellis.

Q. And under whose instructions did he prepare the statement? A. Mine.

Q. And did you instruct him with respect to the names which were to be listed? A. I did.

Q. The directors' names? A. I did.

Q. Had you had any conversation with Mr. Markin prior to that time with reference to the names that were to be listed? A. No, sir, I did not discuss those things with him. He had nothing to do with the running of our company. And you look at me and say it. My correspondence with him and his people show that he didn't have anything to do with the running of our company.

Q. Did you discuss this matter of the nominees
1603 with Mr. Rank? A. No. There wasn't any change in our board. There was nothing to discuss. There was to be no change in the board. You will find that our minutes show that every action we took since I have been on that board has been unanimous action of the board at all times.

There never was any disagreement on any resolution or action that we took at any time.

Q. Mr. Samuels, you have just made the statement that there was never any disagreement on the board. A. That is what I said. About action of the board.

Q. What? A. About action taken by the board when we finished discussions. We had many discussions and differences of opinion. That matter you read about Mr. Fulton as to the merits of a light car and a pleasure car as opposed to a purpose-built cab, that was discussed not once but many times. But when we finished our discussion with Mr. Fulton we convinced him that there wasn't any question about the merit of the purpose-built cab over the ordinary pleasure car. And if you want a lecture on that, I will give you that.

1604 Q. During the course, Mr. Samuels, of those discussions in the board meeting on the respective merits of the purpose built cabs as against stock cars or purpose built cabs perhaps manufactured by other manufacturers, if such there were, was reference ever made during the course of those meetings to the number of shares of stock which Parmelee held in Chicago Yellow? A. That wasn't a matter of discussion with us. We knew how many shares they held. It was not a matter of discussion.

Q. You knew if? A. It had nothing to do with it.

Q. Mr. Samuels, during the year 1935 you and the officers of Yellow were at all times satisfied with the operation and performance of the cabs manufactured by CCM? A. Yes. I have already answered that question.

Q. On 1935, I am asking now. I am handing you Government's Exhibit 314, consisting of a letter from Mr. Stouffer, Vice-President of Yellow Cab Company, to Mr. J. H. Tuttle, Checker Cab Manufacturing Corporation. The first part of the letter reads:

1605 "I am submitting herewith a complete summary—"

A. What is the date?

Q. November 7, 1935.

"a complete summary of the troubles we have encountered with the Model Y cabs to date. Some of these items are of the utmost importance, while others are being furnished to you as a matter of record."

Did you discuss the sending of that letter with Mr. Stouffer? A. I did. I was the one that insisted that the complete list of defects in the cabs that were being delivered should be called to the attention of the factory so that they would know exactly what the trouble was.

And, if I am not mistaken, we also submitted a claim for damages for the cost that we were incurring in curing some of the defects in these cabs that were coming to us, and we let them know at the factory in plain English that we expected them to account to us for what it was costing us to pu the cabs in proper shape.

Q. Then you let the factory know that you were
1606 dissatisfied with those cabs?

Mr. LYNTON: I object.

By the WITNESS:

A. No, we were not dissatisfied with the cabs.

By Mr. HOTCHKISS:

Q. You were not dissatisfied? A. They were coming in poorly inspected that's all. Just exactly as many of the cars delivered today are coming in poorly inspected. As a matter of fact, that cab was the best cab we ever had in the operation of Yellow Cab.

Q. Mr. Samuels, do you recall when the Waverly Company was organized? A. No, I don't.

Q. Do you know a Waverly company or corporation was organized? A. Yes. It was in the twenties, late twenties.

Q. Late twenties? A. That is my recollection. Middle twenties.

Q. Do you recall whether or not the organization of the Waverly Company was discussed with the officers of Parmelee or Transportation Management Company? A.
1607 It was principally discussed between us and our general counsel at the time.

Q. Was it also discussed with counsel for The Parmelee Company or Transportation Management? A. Not that I recall. I have no recollection of ever talking to them about it. It was a matter that came up in our own board, and the chairman of our board at that time suggested that the matter be referred to general counsel for their opinion, and they worked out all the details of the Waverly Corporation.

Q. Now, subsequently, the Waverly Corporation or Company was dissolved, was it not? A. What?

Q. Subsequently the Waverly Corporation was dissolved, was it not? A. That is right.

Q. Prior to its dissolution it held approximately 130,000 shares of Chicago Yellow stock, did it not? A. I believe you are right on that.

Q. I ask if you recall a certain board meeting held on the 19th day of December, 1935, and I hand you Government's

Exhibit 197, which refers to a proposed employment
1608 contract between this corporation, that is, Yellow, and Benjamin Samuels, and it further provides that this corporation make available for a period of sixty days from December 19, 1935, for purchase by Mr. Samuels 2500 shares of capital stock of Chicago Yellow Cab Company at not less than $12 per share net to the company, all as provided in the contract presented at this meeting. Do you recall that meeting? A. Very well.

Q. And that option was offered to you? A. It was. I exercised it.

Q. What action did you take? A. I exercised it and bought the stock.

Q. And at what price did you buy the stock? A. I don't recall. It was the market price at the time.

Q. Would it refresh your recollection on the price, Mr. Samuels, if I stated that on December 19, 1935, that stock was selling on the Chicago Stock Exchange at 12½?

Mr. LYNTON: I object to the question and to the continuance of this line of inquiry on the ground that all this
1609 evidence has been previously adduced, and that Government counsel is departing from the direct examination.

The COURT: Well, I think it is true that there was no interrogation along this line on direct examination. I will sustain the objection.

Mr. HOTCHKISS: Your Honor, I would like to call the Court's attention to the fact that much of the defense examination of Mr. Samuels was directed to the question of the purchase by Yellow of CCM cabs. Much of his testimony dealt in substance with the point that they purchased that cab because it was the best cab, the most desirable cab.

The Government in its line of inquiry is going into the question of certain other influences that have been brought to bear upon the officers of Yellow and Chicago Yellow.

Mr. LYNTON: Are you suggesting that you are now inquiring as to payments of compensation to the officers or directors of Yellow indirectly for the purpose of inducing them to have CCM sell cabs to Yellow? If so, I will withdraw the objection and you can continue as long as you like. If not, I press the objection.

1610 The COURT: If the objection is withdrawn—

Mr. LYNTON: If that is the purpose of his inquiry, I will withdraw it; otherwise, I won't.

Is that the purpose of your question?

Mr. Hotchkiss: Your Honor—

Mr. Lynton: Mr. Hotchkiss seems not to want to answer anything directly.

Mr. Hotchkiss: Testimony has been adduced with reference to the organization of the Waverly Company, with reference to the influence of the so-called Parmelee group in the Waverly Company, the dissolution of that company, the transfer of certain of the stock of that company over to Chicago Yellow and the sale of certain of that stock to interests friendly to CCM, and the sale of further blocks of the stock on option to officers of Yellow and Chicago Yellow.

Mr. Lynton: If you—

Mr. Hotchkiss: It is rather an interesting coincidence which—

Mr. Lynton: I suggest you do not argue your case at this point. I have asked you a blunt question. Is that the purpose of your interrogation?

Mr. Hotchkiss: I have advised the Court as to
1611 what the purpose is.

Mr. Lynton: All right. I persist in my objection.

The Court: We can settle the argument by having the question answered and be through with it.

You may answer.

The Witness: I don't know what the question is.

The Court: The market was 12½ at that time. Does that refresh your recollection?

The Witness: It does not.

The Court: As to what you paid?

The Witness: Whatever the market was on the day I bought was the price at which I bought.

Mr. Hotchkiss: Will counsel stipulate that the market price on the Chicago Stock Exchange was 12½ on December 19; that was high, low and last.

Mr. Lynton: Have you checked that, Mr. Hotchkiss?

By Mr. Hotchkiss: It has been checked.

Mr. Lynton: Is it correct?

By Mr. Hotchkiss: To the best of my knowledge it is correct.

1612 Mr. Lynton: I will stipulate on your—

Mr. Hotchkiss: Subject to check.

Mr. Lynton: I will stipulate on your statement that it is correct.

Mr. Hotchkiss: Very well.

Will you stipulate also that on the 31st of December the stock opened with a high of 19⅞, and the low was 18⅞?

Mr. LYNTON: I will not so stipulate, only for the reason I think it is completely immaterial matter.

The Court: What day was this?

Mr. HOTCHKISS: This was, your Honor, on the 19th. The date that the witness bought it was 12½. And on the 31st of the month that stock was 18⅞, and I ask further to stipulate that on the 8th of the next month the stock had gone up to—that is, the 8th of January—

Mr. LYNTON: I will not stipulate anything about the gyrations of the stock market.

The COURT: Counsel refuses to stipulate, and that is within his discretion. That settles the argument.

Mr. HOTCHKISS: Yes.

1613 Q. Mr. Samuels, do you or do you not recall the price movement of Yellow Cab stock immediately after December 19, 1935?

Mr. LYNTON: I object to the question. It pertains to an immaterial matter.

The COURT: I don't understand the materiality of this. What is the difference whether it went up or down?

Mr. HOTCHKISS: I think it is material.

The COURT: If it went up it shows he is luckier than I am. When I buy my stocks they usually go the other way.

I will sustain the objection. I don't think it is material.

By Mr. HOTCHKISS:

Q. Mr. Samuels, I now turn to the year 1937. The early part of that year Yellow Cab Company had a strike, did it not? A. In March.

Q. In March of that year? A. Right.

Q. And I believe you testified yesterday that Mr. Rank made certain studies with respect to that strike?

1614 A. Well, the study that Mr. Rank had made was even prior to the time of the strike.

Q. When did he make this study? A. The very same time that he called our attention to the fact that the wage of the driver was so low that we were in for some trouble unless something was radically done to bring that wage scale up. As I recall it, that was all reduced to writing.

Q. That was in June of 1937, was it not? A. Well, my own recollection is it was prior to the strike. The strike was in March of 1937.

Q. Prior to the strike he made certain studies with reference to this Chicago taxicab situation, is that correct? A. That is right.

Q. What recommendations did he make? A. He said that from his knowledge of the business and the surveys and checks that they had made, that there were no more than 2500 cabs needed in Chicago to take care of peak demand. That was before the strike.

1615 Q. Did you independently make any surveys similar in nature? A. Yes. Our survey depended on the daily showing of what our drivers were able to earn.

Q. Did your survey take into consideration the earnings of Yellow? A. The earnings of—yes, sure, the whole subject matter.

Q. The whole subject matter? A. Certainly.

Q. In addition to the— A. Primarily the whole trouble was the ability of the driver to earn a decent wage. That you could see every day from the reports as we got them in the office.

Q. Did Yellow accept Mr. Rank's recommendation as to the 2500 as being the policy which Yellow would follow?

Mr. LYNTON: I object to the form of the question. It embodies a series of conclusions: Did Yellow adopt? Is it a policy?

The Court: Read the question.

(Question read.)

The COURT: Sustained.

By Mr. HOTCHKISS:

1616 Q. Did the Board of Directors of Yellow discuss this report of Mr. Rank's? A. Yes. It was discussed. Very much so.

Q. Did the Board of Directors take any action on that report of Mr. Rank's? A. We did not. Up to the time of the strike.

Q. You did not? A. No. That was of course due to the fact that we were then under an ordinance which fixed the number of cabs at 4108.

Q. With respect to that last statement of yours, are you quoting from the ordinance?

Mr. LYNTON: What?

The WITNESS: Quoting from the ordinances of the City of Chicago.

By Mr. HOTCHKISS:

Q. That is a direct quote? A. No, sir.

Q. That is the ordinance?

Mr. LYNTON: No.

The WITNESS: It is not a direct quote. You have the ordinance there.

Mr. LYNTON: If your Honor please—

By Mr. HOTCHKISS:

Q. Did you—

1617 Mr. LYNTON: Just a moment, Mr. Hotchkiss? Let me finish my statement.

I don't think Government counsel ought to argue with the witness as to what the language of the ordinance is, and I object to the form of the question.

The COURT: Sustained.

By Mr. HOTCHKISS:

Q. Mr. Samuels, I call your attention to Government's Exhibit 380, there being attached to it a rough draft copy of a Yellow-Checker contract. A. Yes.

Q. Who conducted the negotiations with respect to that rough draft contract up to that point? A. Well, do you mean the negotiations between ourselves and our attorneys, who drew it?

Q. The negotiations between your company Yellow, or on behalf of Yellow, and with Cab Sales and Checker. A. Mr. Rank.

1618 Q. Did you participate in any of those negotiations with Cab Sales? A. I did not.

Q. And Checker? A. No.

Q. In what capacity did Mr. Rank conduct those negotiations? A. As our advisor and a member of our board.

Q. What other position did he occupy at that time? A. He had a number of other positions.

Mr. LYNTON: Just a moment. With what company?

By Mr. HOTCHKISS:

Q. What position did he have with Parmelee? A. I think he was president of Parmelee at that very time.

Q. Now, Mr. Samuels, did you provide Mr. Rank with actual information respecting Yellow's operations? A. Well, I don't think that I did. We had discussions at our meetings informally in the office. The records were all there and gotten out and hashed over and rehashed and recompiled and comparisons made with other com-

1619 panies. It was almost a weekly occurrence for some graphs and some figures to be prepared. That was all done in the office.

Q. That is in the office of Yellow? A. In our offices.

Q. I call your attention now to page 2 of this exhibit: the first full paragraph states:

"Whereas Yellow is not at the present time and has not for a period of more than ninety days operated 516 of the licenses owned by it, nor has it equipment available for the purpose of exercising the rights and privileges conferred on it by reason of such 516 licenses."

Is that a true statement?

Mr. LYNTON: I object to the question. That is outside of the scope of the direct examination. The evidence is in as part of the government's case. They have already had ample examination on the exhibits.

The COURT: Overruled.

By the WITNESS:

A. I would say that is substantially correct if you mean by it the same thing I mean by it.

1620 By Mr. HOTCHKISS:

Q. Well, what do you mean by it? A. I mean by it we had the cabs. They were not being operated and some of them were probably in such shape it would have been very difficult job to put them back in operation but they were there.

Q. It says: "nor has it had equipment available for the purpose of exercising the rights and privileges conferred on it by reason of such 516 licenses." A. That is what I am talking about.

Q. You now say you did have the equipment? A. We had the equipment.

Q. You had the cabs? A. The physical cabs, we had, but we did not have the ability to put the cab in operation. If the city had attempted to force us into the operation of these particular vehicles—

Q. Why couldn't you— A. If you want substantiation of that, all you have to do is look at the records of the State of Illinois. You will find records of the license numbers, the motor numbers, the chassis numbers and the

1621 makes of the cars. I can bring that in if you want it.

Q. Mr. Samuels, I read you Government's Exhibit No. 385. It has been put in evidence, and it consists of a letter from Mr. Sokoll to Mr. Markin, dated December 28, 1937, and states:

"I am transmitting herewith a schedule showing the actual amount of revenue which Checker has lost due to retiring cars under the interim agreement with Yellow from April 1, 1937 to and including November 30, 1937."

Did you ever have any discussion with Mr. Rank concerning a purported or so-called interim agreement with Checker?

Mr. LYNTON: I object to the form of the question. It is asking for a conclusion, the word "interim agreement."

The COURT: Overruled.

By the WITNESS:

A. I never heard of the word "interim agreement." There were discussions between—

By Mr. HOTCHKISS:

Q. Did you have—

The WITNESS: There were discussions between us and Mr. Rank to the effect that he was talking
1622 to Mr. Sokoll about the possibility of coming to some understanding if the City Council made up its mind to reduce the number of cabs down to 3,000, that we would get together and make proper compensation to Checker along some lines. There was never any so-called interim agreement of any kind. I never heard of any such discussion, but there were talks about proper compensation.

Q. Mr. Samuels, you just stated that there were talks about proper compensation; for whom? A. For Checker for reducing its fleet from 1,500 down to a thousand.

Q. How early did those talks start in 1937? A. Well, I would say that they began in the early summer of 1937.

Q. Now, did those talks involve any discussion of Checker reducing or withdrawing cabs from operation in the early summertime, or starting then? A. I do not recall that entered into it. The question was merely whether or not they would be able to enter into some understanding, that is to reduce from 1,500 down to 1,000, if the City Council passed an ordinance reducing the number
1623 from 4,108 down to 3,000, and we, in accordance with our part of the deal, were supposed to reduce from 2,166 down to 1,500.

Q. Now, these conversations then did not involve any discussion of withdrawing by Checker of cabs from operations starting in April of 1937? A. Not that I know of. I do not recall any such thing entering into it. If they were as smart as we thought they were, they would be doing the same thing we were doing.

Q. What were you doing? A. We were cutting down the number of cabs in operation in order to enable a fellow to make a decedent living.

Q. You were cutting them down starting at what time? A. Just from the strike on.

Q. Just from the strike on? A. Yes. The handwriting was on the wall that if we operated all the cabs that we owned and Checker operated all the cabs that they owned, the strike would have been absolutely ineffectual, because they could not possibly earn a decedent wage with all
1624 these cabs operating. The business was not on the street, and we made up our minds that we were not going to be fools enough to keep operating a lot of equipment when the money was not there. Every cab you had on the street meant one or two men, and they were competing against each other on a commission basis, and the money was not there, and the only way you could have for making more money was to cut down on the number of cabs you were operating. There was no other way to do it.

Q. Did you know in the early summer of 1937 that Checker was withdrawing cabs from operations? A. I did not.

Mr. Lynton: I think he has answered that question several times.

The Witness: I told you that. I said I had no knowledge of that. I said if they were as smart as we were, they would have been doing the same thing we were.

Mr. Hotchkiss: Now, there is no question before you.

The Witness: Well, I answered the question.

Mr. Hotchkiss: There is no question before you now.

1625 The Court: I think this is a good point at which to recess.

(Thereupon a recess was taken to 2 o'clock p. m. of the same day, June 8, 1948.)

1626 No. 46 C 1339

United States of America, plaintiff,

vs.

Yellow Cab Company, *et al.*, defendants.

Before Judge LaBuy
Tuesday, June 8, 1948,
2 o'clock p. m.

Court met pursuant to recess.

Present:

Mr. Hotchkiss
Mr. Williams
Mr. Lynton
Mr. Ginsberg,
Mr. Fuller
Mr. Climenko

BENJAMIN SAMUELS, resumed the stand and testified further as follows:

Cross Examination (Continued)

By Mr. HOTCHKISS:

Q. Mr. Samuels, I show you Defendants' Exhibit 15 and I call your attention to a line that I picked at random which states, "dividends paid in 1930." What month were dividends ordinarily paid by Chicago Yellow?

1627 A. I don't remember now. At one time we paid every month, and then we changed to every three months. It has been every three months since that change.

Q. Then the dividends, where it refers here to dividends paid in the particular year, that then refers to the actual payments made during that particular year, that calendar year? A. Total amount.

Q. Mr. Samuels, earlier, this morning, you testified that Yellow had made certain loans to cab companies in Evanston, I believe. A. That is right.

Q. What year were those loans made? A. I don't recall offhand.

Q. Will it refresh your recollection if I state that a loan was made for $150,000 in December of 1941?

Mr. LYNTON: To whom?

By Mr. HOTCHKISS:

Q. To Michael Harry Freimark? A. I remember that.

Q. Was it made about that time? A. That was

1628 in connection with a gasoline contract, and I think it was the Radio Cab Company of Evanston.

Q. Was Mr. Friemark connected with those Evanston companies, do you know? A. He must have had some financial interest in it. I don't know just what his connection was. He made the deal.

Q. And the loan was made to him, is that correct? A. That is right.

Q. And it was made by Benzoline, is that correct? A. In connection with the deposit of certain stocks as collateral.

Q. Do you know what if any connection Mr. Freimark had with Mr. Markin at that time? A. No, I don't know what the physical connection was. I have known Mr. Freimark, seeing him in New York. I don't know just what his capacity is there.

Q. Do you know whether Mr. Freimark was in any way connected with Checker Cab Manufacturing Company? A. Not that I know of.

1629 Q. Or whether he had ever been? A. Not that I know of, personally.

Q. Do you know whether Mr. Freimark was ever connected with the Checker Cab Company?

Mr. LYNTON: Which company is that?

The WITNESS: Do you mean the Checker Taxi Company of Chicago?

By Mr. HOTCHKISS:

Q. Yes. A. I have never heard of his name in connection with Checker Taxi Company.

Q. Do you know whether he was ever connected with Cab Sales & Parts? A. Not that I know of.

Q. I call your attention now, Mr. Samuels, to Government's Exhibit 380, that rough draft of the Yellow-Checker agreement, and I read from page 4 of that rough draft. It states:

"Whereas Checker and Yellow made certain verbal arrangements for the compensation of Checker for certain losses suffered by Checker as a result of the taxi drivers' strike in Chicago of 1937"—

Were any verbal arrangements made between Checker and Yellow with reference to such compensa-

1630 tion? A. None that I have any knowledge of definitely. I have never made any myself, and all dealings with Checker in connection with that deal were made by Mr. Rank.

Q. The covering letter on this rough draft shows it came from Howard Ellis of the firm of Kirkland, Fleming, Green, Martin & Ellis, and is directed to Mr. Samuels, to yourself, who provided that firm with the information which enabled them to draft this document?

Mr. LYNTON: I object to the form of the question. It assumes all sorts of conclusions. It is rather a long letter.

The COURT: No, I think it is proper. Overruled.

By the WITNESS:

A. I don't know. I don't know personally.

By Mr. HOTCHKISS:

Q. Do you know through your conversations with anyone in the Yellow or Chicago Yellow organization? A. Yes.

Q. And what is your knowledge from that source? A. Those entire negotiations were carried on by

1631 Mr. Rank and I assume in view of the fact that things was sent to me that he communicated with Mr. Ellis.

Q. Did Mr. Rank advise you as to the nature of these verbal arrangements?

Mr. LYNTON: I object to that. It assumes that there were verbal arrangements.

The COURT: Sustained.

By Mr. HOTCHKISS:

Q. Was Mr. Rank authorized by Yellow to conduct these negotiations with Checker and Cab Sales? A. Do you mean by a vote of the board of directors?

Q. In any manner. A. Well, I would say he was not authorized by anybody. He took it upon himself as our advisor to conduct the negotiations?

Q. Did Yellow at any time repudiate his actions?

Mr. LYNTON: I object to the form of the question. We don't know what actions are being discussed. We don't know what the word "repudiate" means in connection with that question. I don't know what actions are under discussion.

Mr. HOTCHKISS: We have been discussing the various conversations and discussions and negotiations.

1632

The COURT: You may answer.

By the WITNESS:

A. There was nothing to repudiate. The man was talking about a final consummation of some proposition which would materialize when we succeeded in having the City Council reduce the number of cabs.

By Mr. HOTCHKISS:

Q. I call your attention again to Government's Exhibit 380, on page 6 of that exhibit. A. That number does not mean anything to me. Is this the—

Q. This is the rough draft copy of an agreement. A. O. K.

Q. It reads:

"Checker promises and agrees as follows:

"(a) To release to the City of Chicago to be cancelled 500 of the taxicab licenses now held by it on or before the .... day of 19...., which 500 licenses shall be relinquished from that group of licenses owned by Checker and operated by driver-owned taxicabs as distinguished from licenses used by taxicabs owned

1633

by Checker or by Cab Sales."

Did you have any conversations with Mr Rank concerning that provision or proposed provision in the rought draft? A. I never did.

1634 Q. Did you at that time have any knowledge concerning the physical set-up of the taxicabs then being operated by driver-owners under the Checker insignia? A. I don't know what you mean by the physical state. Do you mean whether they were physically in fine condition to run?

Q. Yes. A. Well, I would say from what I observed on the street they were in pretty bad shape.

Q. Now I refer your attention to Government's Exhibit 392, which consists of an agreement dated January 3, 1938, between Yellow Cab, Cab Sales and Checker.

Prior to the execution of that agreement, Mr. Samuels—

A. This one?

Q. Yes, of January 3, 1938.

(Continuing)—did you have any conversations with Mr. Rank regarding the possibility that Checker should pay you, or make any payments to you for reducing the number of cabs? A. Sure.

Q. What was the conversation? When did the con-
1635 versation occur? A. I would say it was after the ordinance was passed. That would be sometime—

Q. December of 1937? A. The first week, I think it was, of December, 1937, and between that time and the final draft of that paper.

Q. What was the conversation? A. He said he had been asked—that he had made representations that maybe we were entitled to some consideration for giving up our five hundred and some odd licenses, in view of what Mr. Sokoll had asked him as compensation for them giving up their five hundred.

In that discussion Mr. Sokoll had advanced the idea that their giving up five hundred would result in a tremendous amount of loss, because they were paid a fixed compensation per month by these drivers, whether the drivers earned any money or lost any money, the company had that amount of revenue coming, whereas in our case, they knew since the strike we had not been operating a lot of our equipment, so the proposition of their paying us was out of the window.

1636 Q. Is it true, Mr. Samuels, that you felt, in view of the reductions you were making in the Yellow Cab Fleet, that you were entitled to compensation from Checker or Cab Sales? A. No, that had been merely thrown into the argument trying to offset what they were asking us.

Q. Mr. Samuels, did Mr. Rank at any time report to you, in connection with the negotiations he was having with Mr. Sokoll, that he was proposing that no payments be made by either party, that the benefits would be regarded as offset and equalized? A. Have you finished your question?

Q. Yes. A. I do not recall that came out just that way.

Q. Was there any conversation along that general line? A. I don't think so.

Q. When did you first learn from Mr. Rank that these negotiations between himself and Sokoll were heading off in the direction of an agreement under which Yellow would pay Checker? A. Well, that had been pretty well decided by ourselves among ourselves.

1637 Q. You say among yourselves. Just what do you mean? A. Well, Mr. Rank was telling us he was working with Mr. Sokoll to bring about this agreement to reduce the cabs, which was his own solution of the matter, to get this wage scale up to a position where the men would earn a decent livelihood. In those discussions, this question of compensation was constantly under discussion.

Q. When did the discussions start? A. Oh, I would say in the fall of 1937.

Q. And from that time on? A. As we were approaching the time when this ordinance would finally come up for final passage, and in those discussions in our own offices, among ourselves, the quetsion of what benefits would accrue to Yellow were frankly and freely discussed, and we worked out our own ideas on the basis of what it was going to save us in dollars. We knew that we were paying out on cabs about $85 a year and not getting any advantage.

Q. What do you mean by a payment of $85 a year? A. Those were the license fees we had to pay on each cab.

1638 Q. So that was on the 516 cabs? A. 571, it turned out to be.

Q. 571? A. Yes, sir.

Q. You were paying approximately $80 a year? A. I thought it was about $85.

Q. $85 a year. A. And that, together with the amount invested in cars, which we had no use for, according to our own ideas, and were not operating, justified us over a five-year period to lay out X dollars which would not cost the company a nickel in the end.

Now, that is the basis on which we ourselves discussed it. Mr. Rank discussed it from the point of view of saying Mr.

Sokoll had an idea that he ought to get somewhere around $750 per license, and we said it was out of the question, and we discussed the per-license idea back and forth.

And you will find, I think, in the contract it was worked out, as I remember it, at $550 per license. That was a boiled-down figure from around $750, as I recall.

1639 Q. Mr. Samuels, why didn't you surrender the five hundred and seventy-odd licenses and save the payment of some $85 a year, and save the payment to Checker?

Mr. LYNTON: I object to the question as immaterial.

The COURT: Overruled.

By the WITNESS:

A. That is a very simple proposition. It was only a matter then of creating another outfit that had a right to those licenses that would be in competition with us. We were trying to get the number boiled down so that there would not be any competition on the street against our own men.

There is no sense in giving them over to the city to peddle out again.

By Mr. HOTCHKISS:

Q. Mr. Samuels, the agreement of January 3, 1938, Government's Exhibit 392, provided, did it not, for the payment by Yellow to Checker of some $375,000 in addition to the $45,000 down payment?

Mr. LYNTON: The exact figure is $320,000 including the $45,000.

Mr. HOTCHKISS: $275,000, I beg your pardon.

1640 The WITNESS: It is a total of $320,000. $275,000, was it, or two hundred and seventy?

By Mr. HOTCHKISS:

Q. Two hundred and seventy-five thousand. A. Spread over five years in quarterly instalments.

Q. Now, did you make these payments of $275,000? A. We made them in quarterly instalments.

Q. You made all of those payments? A. Yes, sir.

Q. Did you make them in cash? A. Cash?

Q. Yes. A. Yes, by check.

Q. You then did not take advantage of the provision in the agreement under which you could have surrendered certain of the notes which had been given by Cab Sales to Benzoline? A. No, we did not.

Q. Do you know what Cab Sales did with the money which you paid them under this agreement?

Mr. LYNTON: You mean Checker, don't you? Not Cab Sales.

Mr. HOTCHKISS: All right.

1641 Q. Checker. Do you know? A. I don't know. The check came back and showed the money got into their treasury. I had no idea what they did with the money.

Q. Did Cab Sales pay off the Benzoline loan and the Waverly loan? A. Yes, every dollar was paid off with interest.

Q. When did they finish paying that off? A. I don't know.

Q. You don't remember? A. No.

Q. Mr. Samuels, what are the qualifications which a Yellow Cab sets up on hiring cab drivers?

Mr. LYNTON: I object to the question as immaterial.

The WITNESS: I don't understand the question. What do you mean, age?

Mr. LYNTON: I made an objection, Mr. Samuels.

The COURT: I don't see the materiality of it. I don't think it tends to prove or disprove any issues in this case. I sustain the objection.

By Mr. HOTCHKISS:

Q. Mr. Samuels, have you made any study of the system of accounting used by Parmelee in connection with
1642 its inter-station operations? A. I don't know anything at all about their accounting. You are talking about the local Parmelee Company?

Q. Yes. A. No.

Mr. HOTCHKISS: That is all.

1643 Redirect Examination.

By Mr. LYNTON:

Q. How old are you, Mr. Samuels? A. Seventy.

Q. There has been an insinuation by the government in connection with an option by you to purchase certain shares of stock of Chicago Yellow, that that might affect your independence as a director of Chicago Yellow or Yellow. Was that the purpose of that option? A. It certainly was not.

Q. Was your independence as a director or officer of Yellow or Chicago Yellow affected by that option? A. It was not.

Q. Has it been affected by anything at any time? A. Not as far as I have been able to observe.

Q. Have you at all times acted independently in those companies? A. I have.

Q. And to the best of your judgment? A. Absolutely.

Q. And have you been controlled in the exercise of your duties by any other person? A. Certainly not.

1644 Q. Questions were asked on cross examination concerning your negotiations relative to the loan by Benzoline to Cab Sales, and I believe that during your cross examination you stated that your negotiations were with Mr. L'Amoreaux, is that correct? A. That is correct.

Q. Was Mr. L'Amoreaux in those negotiations acting on behalf of Cab Sales? A. He was the attorney that handled the whole deal.

Q. And when you say "the attorney," do you mean the attorney who handled it with respect to Cab Sales? A. Right.

Q. Did you know at that time whether or not he was a stockholder of Cab Sales? A. I did not.

Q. Do you know who were the stockholders of Cab Sales? A. I did not.

Q. Was Mr. L'Amoreaux acting at that time to your knowledge in any capacity other than with respect to

1645 Cab Sales? A. As far as I knew, it was his only interest.

Q. You mentioned that Mr. L'Amoreaux at sometime during that period had some connection with Parmelee. Do you know whether or not at some later date Mr. L'Amoreaux did become an officer of Parmelee? A. My recollection—.

Q. Just answer that yes or no. A. I would say no.

Q. You don't know? A. I don't know.

Q. Do you recollect that Mr. Miller died in 1932? A. That is right. I don't know about the date. I am very much confused in my mind about just when, but it was in the early thirties.

Q. And do you recall that Mr. L'Amoreaux died about a year later? A. That is right.

Q. Mr. Miller had prior to his death been president of Parmelee, had he not? A. That is right.

Q. Does that refresh your recollection whether, after Mr. Miller's death, Mr. L'Amoreaux became an offi-

1646 cer of Parmelee? A. Well, I wouldn't know whether he became an officer of Parmelee, but as far as Yellow was concerned, he took the place of Ernest Miller as far as our picture was concerned.

Q. By that do you mean that he acted in a consultant capacity? A. That is correct.

Q. Under the so-called management contract? A. Yes. Just as Mr. Miller had been doing.

Q. And in connection with your testimony concerning Mr. L'Amoreaux's interests and offices in 1931 were you mentioning those as offices that he might have had regardless of negotiations with you concerning Cab Sales? A. Sure, I assumed he had offices in other companies that I knew nothing about.

Q. Are you testifying now and did you testify before that your negotiations with respect to Cab Sales involving discussions between you and Mr. L'Amoreaux were confined solely to Cab Sales? A. That is right.

Q. And Mr. L'Amoreaux in that connection acted solely for Cab Sales? A. That is right.

1647 Q. Questions were asked you on cross examination concerning the formation of Waverly. Do you recall that after Waverly was formed, stock owned by Yellow in Chicago Yellow was sold to Waverly? A. That is right.

Q. What was the purpose of that sale of stock? A. Well, it was had in mind by our general counsel at the time that a tax loss might be established by the sale of Yellow Cab stock to Waverly, for the stock at that time had a much lower stock market quotation than when it was bought originally.

Q. Yellow at that time then had in its treasury shares of Chicago Yellow, is that correct? A. That is correct.

Q. And the shares so far as the market value had declined by that time, is that correct? A. That is right.

Q. And was the proposal that if Yellow should sell these shares to another corporation a tax loss may be realized? A. That was the whole discussion at that time with our general counsel.

1648 Q. After the formation of Waverly, was a tax loss claimed by Yellow? A. It was.

Q. Reference was made in cross examination to Messrs. Keller and Fulton. Who was Mr. Keller? A. Mr. Keller is a lawyer practising here for many years, and is now engaged in some branch of insurance, as head of an insurance company.

Q. Prior to the period when he became a director of Yellow, had he been acting as a lawyer? A. Yes, he was a member of a firm down here.

Q. Prior to the time he became a director of Yellow, nad he to your knowledge any experience with taxicab operations anywhere? A. Not as far as I know.

Q. Who was Mr. Fulton? A. Well, he was in the brokerage business in connection with real estate; just exactly what phase of it, I don't know.

Q. Prior to the time when he became a director of Yellow, had he any experience to your knowledge in the operation of taxicabs anywhere? A. No.

Q. I believe during cross examination you gave certain testimony with respect to the presence of Mr. Rank
1649 at a meeting of directors of Yellow. At that time you also testified, as I recall, that Mr. Rank was in fact a director of Yellow, is that correct? A. That is right.

Q. And when Mr. Rank attended the meeting of the board of directors of Yellow, he being a director, did he attend in the capacity of such director? A. As a director.

Q. Did he attend in the capacity of being an officer of Parmelee? A. No, sir.

Mr. HOTCHKISS: I object to the last two questions as calling for a conclusion as to the legal status of this person.

Mr. LYNTON: If your Honor please, I think that the questions on cross examination were practically in that form.

The COURT: Objection overruled.

By Mr. LYNTON:

Q. Questions were asked you during cross examination concerning a conversation which you had with Mr. Markin concerning a resignation of Mr. Keller and Mr. Fulton, and I believe you testified that you felt that you per-
1650 sonally did not want to suggest those resignations to those two gentlemen, is that correct? A. That is right.

Q. Was that a matter of taste on your part? A. No, I couldn't see why I should ask two men to resign from the board who had been on there for quite a long time, and I knew of no reason why they shouldn't stay on as far as I personally was concerned.

Q. And in making that answer, you were simply speaking as Mr. Benjamin Samuels, is that correct? A. Yes.

Q. Were you saying in effect that you, as Mr. Benjamin Samuels, did not want to suggest to them that they resign? A. That is correct.

Q. Reference was made during cross examination to the word "nominees" in proxies and proxy statements. That is a word which has several different legal meanings, and I would like to ascertain from you what was meant during your testimony. By the word "nominees," did you mean

the persons whose names were mentioned in the
1651 proxies? A. That is right.

Q. And did you mean only that? A. That is all.

Q. During cross examination reference was made to certain defects on inspection of cabs bought by Yellow in 1935 or thereabouts. Do you know what the total amount claimed by Yellow for those inspection defects was? A. Yes.

Q. Approximately what? A. Around $2,000 on all of the cabs mentioned in the government's letter.

Q. If I suggest to you that the amount claimed was $3,468.60, does that refresh your recollection that that figure is correct? A. That would be it if you had the figures.

Q. As a matter of fact, was the final adjustment even less than that $3,000 figure? A. Yes. We compromised on that.

Q. You testified during cross examination that Mr. Rank first communicated to the directors of Yellow his opinion that taxicab conditions in Chicago required a reduction of cabs prior to the year 1937, is that not right?
1652 A. That is right.

Q. There is contained in the government's exhibit in this action Exhibit No. 364, which is a letter from Mr. Rank to Yellow dated August 16, 1935. Does the mention of that date refresh your recollection that that communication by Mr. Rank was as early as 1935? A. That was my impression when Mr. Hotchkiss was examining me, that I had a distinct recollection it was prior to the strike by a year anyway, that we had this definite letter from Mr. Rank in which he suggested the number, if I am not mistaken.

Q. I will show you the letter. I will read you from this letter dated August 16, 1935 from Mr. Rank to the board of directors of Yellow:

"Gentlemen:

"This will serve as a confirmation of the opinion given by me verbally before the board at the meeting held on Thursday, August 15 to the effect that in my opinion under business conditions now obtaining or that can be foreseen in the immediate future, Yellow Cab
1653 Company will not suffer a loss in gross business because of the reduction in its fleet from 2,165 to 1,750 cabs, provided that the necessary adjustments are made in its operating schedules and the cabs are not permitted to overcrowd hack lines or cab stands.

"Consequently, I am in favor of an effort to secure an extension of a limitation ordinance or a possible

franchise involving a reduction in the number of cabs to be allowed on the streets of Chicago."

There is further material in this letter.

Does that refresh your recollection that Mr. Rank communicated that opinion to the board of directors of Yellow at least as early as August, 1935? A. That is correct.

Q. There is just one more thing, Mr. Samuels. During cross examination you testified concerning the discussions within the offices of Yellow as to the reduction of cabs during the latter part of 1937 and I believe you testified that it was the opinion of the officers of Yellow that a total reduction of cabs on the streets of Chicago ought
1654 to be made. Is that not right? A. That is right.

Q. I believe you also testified that from Yellow's standpoint there would be little purpose in Yellow reducing the number of cabs operated by it unless there was a general reduction of licenses in the city of Chicago, is that correct? A. It had to be.

Q. And was your testimony on cross examination addressed to the problem of a general reduction of licenses issued by the city of Chicago, rather than a question of a reduction by Yellow as against any one or more possible competitors? A. Well, unless the total number of cabs was reduced, the thing we were trying to bring about, namely, raising the wages of drivers, couldn't possibly be attained.

Q. So that your discussions were addressed to the reduction in the total number of cabs? A. Total number.

Q. And your discussions were addressed to that as a solution in part to the problem of drivers' wages during that period, is that correct? A. That is right.

1655 Mr. LYNTON: No further questions.

Recross Examination.

By Mr. HOTCHKISS:

Q. Mr. Samuels, you have testified on redirect concerning the reason why certain Chicago Yellow stock owned by Yellow was sold or transferred to the Waverly Company. Is that correct? A. What is the question?

(The last question read by reporter.)

The WITNESS: Yes.

By Mr. HOTCHKISS:

Q. Thereafter, did Waverly purchase additional stock of Chicago Yellow? A. I don't recall that they bought from Chicago Yellow.

Q. No. A. They acquired some on the market, I understand.

Q. They acquired some in the market? A. That is right.

Q. Do you recall how much they acquired? A. No, I don't.

Q. Would it refresh your recollection if I told you
1656 it was in the vicinity of 50,000 shares? A. How many?

Q. 50,000. A. If you have the figures there, I suppose it is right. I wouldn't be able to say.

Mr. LYNTON: The question is whether you have any knowledge on it, Mr. Samuels.

The WITNESS: No.

Mr. LYNTON: I think you should answer the questions.

The WITNESS: We have a complete record in the office.

By Mr. HOTCHKISS:

Q. I read you from Government's Exhibit 146, consisting of the minutes of directors' meeting of Yellow held June 17, 1932.

"Mr. Miller stated that he thought it possible that the Waverly Corporation would, in addition to its present holdings, buy up 50,000 shares of the capital stock of Chicago Yellow Company at $7 per share, and that approximately $400,000 would be required for this purpose and for the payment of certain other liabilities to the Waverly Corporation for its general
1657 corporate purposes. The question of whether this money be obtained through an increase of the capital stock of Waverly Corporation or by this corporation loaning said sum to the Waverly Corporation then came up for consideration. Each director expressed himself in favor of having the Waverly Corporation buy up to 50,000 additional shares of the capital stock of Chicago Yellow Cab Company, and on motion duly made, second and carried, and by the affirmative vote of all of the directors present at this meeting, the following resolution was unanimously adopted:

"Resolved, that the sum of $400,000 required by the Waverly Corporation be obtained, either (1) by increasing the capital stock, from the sale of such increased stock to the corporation, or (2) by this corporation loaning to the Waverly Corporation the sum of $400,000, as shall be determined by Ernest H. Miller and counsel for this company."

Mr. LYNTON: What is the date of that meeting?

Mr. HOTCHKISS: June 17, 1932.

1658 Q. Does that refresh your recollection? A. Not very much. I imagine if it is in there I must have been there.

Mr. LYNTON: Mr. Samuels, I am utterly confused. I don't know what your recollection is supposed to be refreshed as to.

The WITNESS: Well, may I say if—

Mr. LYNTON: You ask the next question. We will straighten it out.

The WITNESS: Let's see what happened.

Mr. LYNTON: Have you a question on that, Mr. Hotchkiss?

Mr. HOTCHKISS: I have a question.

Mr. LYNTON: If not, let us not discuss this.

You say there is a question?

Mr. HOTCHKISS: Read back. Let the reporter read it back.

The COURT: Read it, Mr. Reporter.

(The desired portion of the record was then read by the reporter as follows.

"Mr. LYNTON: What is the date of that meeting?

"Mr. HOTCHKISS: June 17, 1932.

1659 "Q. Does that refresh your recollection? A. Not very much. I imagine if it is in there I must have been there.

"Mr. LYNTON: Mr. Samuels, I am utterly confused. I don't know what your recollection is supposed to be refreshed as to.")

1660 By Mr. HOTCHKISS:

Q. Mr. Samuels, does that refresh your recollection with respect to the proposed purchase by Waverly of approximately 50,000 shares of stock of Chicago Yellow?

Mr. LYNTON: I object to the form of the question. There was a resolution authorizing Mr. Miller to negotiate for them. There was no proposal. I prefer to have it stated rather precisely, if the Court please. There is a purpose to it.

The COURT: He may answer the question.

By the WITNESS:

A. Well, looking at this Exhibit I find that I was present at the meeting, but to tell you the truth, I have no recollection of this transaction.

By Mr. HOTCHKISS:

Q. I will go ahead one step further on the transaction to ascertain if you remember the next step.

Do you remember whether Waverly did, about that time, purchase considerable blocks, or a considerable block of Chicago Yellow stock?

A. Well, my own personal recollection is that
1661 there was stock bought, but I was under the impression it was not bought by Waverly, and was not in considerable blocks. It was bought in lots of 100 shares, or 200 shares at most, on the open market.

Q. Do you have any recollection with respect to the question of whether Yellow loaned any money to Waverly to enable Waverly to purchase the stock?

Mr. Lynton: In 1932?

Mr. Hotchkiss: In 1932.

By the Witness:

A. I have no recollection of that proposition at all.

Mr. Hotchkiss: All right. Thank you. That is all.

Mr. Lynton: That is all.

The Court: You are excused.

(Witness excused.)

1662 Claude S. Masters, called as a witness on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. Lynton:

Q. What is your full name, Mr. Masters? A. Claude S. Masters.

Q. What is your residence address? A. 5525 11th Avenue South, Minneapolis, Minnesota.

Q. Are you presently connected with the Yellow Taxi Company of Minneapolis? A. I am, sir.

Q. What office do you hold? A. I am president of the company.

Q. When was that company organized? A. In 1931.

Q. Have you been president of the company substantially since its organization? A. I have, sir.

The Court: Keep your voice up louder, please, so that we can all hear you.

The Witness: Yes, sir.

1663 By Mr. Lynton:

Q. Have you been engaged in the business of taxicab operations in the City of Minneapolis for some time? A. I have, sir.

Q. When did you first enter into that business? A. 1917.

Q. In 1930 were you employed by any company operating taxicabs in the City of Minneapolis? A. I was.

Q. By what company? A. Yellow Cab Company.

Q. Was that a Minnesota corporation? A. Yes.

Q. Do you know who at that time controlled that corporation? A. In 1930?

Q. That is right. A. The company went into receivership May 8th, 1930.

Q. Immediately before the receivership, who controlled that company? A. Immediately prior to that, it was
1664 owned by several business men in Minneapolis who had taken it over from the street car company. The street car company operated it for about two and a half years.

Q. What was the name of that street car company? A. The Minneapolis Street Railway Company.

Q. Did the receivers continue its operation during a part of 1930? A. They did, sir.

Q. In 1930 did you know Mr. Morris Markin? A. I did.

Q. When did you first meet him? A. I met Mr. Markin 1922 for the first time.

Q. In 1922, were you connected with the taxicab company in Minneapolis? A. I was.

Q. What was the name of the company? A. Yellow Taxi Company.

Q. In 1930 did you communicate with Mr. Markin? A. I did.

Q. Was the first communication a telephone call, or personal conference? A. I called Mr. Markin.

1665 Q. Where were you when you called him? A. In Minneapolis.

Q. To what place did you put the call? A. To Chicago.

Q. Did you speak with Mr. Markin? A. I did.

Q. What was the conversation? A. I told Mr. Markin that the company was in receivership, and I thought there was a good opportunity for him to come into Minneapolis and operate cabs.

Q. What did he say? A. He told me at that time that he might be interested later, and to talk with him at a future time. Right then he was not very much interested.

Q. Following that telephone conversation, did you come to Chicago? A. I did.

Q. Can you fix the time in 1930 when that telephone conversation occurred, approximately? A. It was in the summer of 1930. I don't know just when.

Q. Was it shortly after your telephone conversation that you came to Chicago? A. I did.

1666 Q. Did you see Mr. Markin? A. I did.

Q. Did you speak with him? A. Yes.

Q. Was there anybody else present? A. No.

Q. What was the conversation? A. I told him that the company was in receivership and was in bad shape, and that undoubtedly the receiver would sell the assets of the corporation in a short time.

Q. Did you mention the price? A. They wanted—I told him I thought he could buy it for between fifty and seventy-five thousand dollars.

Q. Keep your voice up, if you can. A. He told me he thought that that was too much and he was not interested at that time.

Q. Was that the end of the conversation? A. That is right.

Q. Did you return to Minneapolis? A. I did.

Q. Did you later in 1930 speak with Mr. Markin? A. I did.

1667 Q. About when? A. About the first week in December of 1930.

Q. Was that conversation a telephone call or a personal conference? A. Telephone call.

Q. Who made the call? A. I did.

Q. Did you speak with Mr. Martin over the phone? A. I did.

Q. What did you say? A. I told him that the receiver had now decided to sell the assets of the defunct corporation, and that the sale would be the latter part of December, 1930.

Q. Did you say anything else? A. I did.

Q. What else did you say? A. I asked him if possible to attend the sale, or to send someone up.

Q. What did Mr. Markin say? A. He told me that he would.

Q. Was that the end of the conversation? A. It was.

Q. Did Mr. Markin send someone to the receiver-

1668 ship sale? A. He did.

Q. When was the receivership sale? A. December 31, 1930.

Q. Whom did Mr. Markin send? A. Mr. Paul L'Amoreaux.

Q. Were the assets of the company in receivership sold on that sale? A. They were.

Q. Who bought it? A. Well, they were purchased by Mr. L'Amoreaux.

Q. In general, what did those assets consist of? A. Some old cabs and licenses.

Q. What licenses were they? A. State and City.

Q. When did those licenses expire? A. Well, the State expired as of midnight, December 31, 1930.

Q. That is the date of the sale, then? A. That is right. And the City expired February 15, 1931.

Q. You testified that Yellow Taxi Company of
1669 Minneapolis was formed in 1931? A. That is right.

Q. Did your company, Yellow of Minneapolis, buy these assets from Mr. L'Amoreaux? A. It did.

Q. What was the sales price on the receivership sale paid by Mr. L'Amoreaux? A. It was somewhere between sixteen and seventeen thousand dollars. I could not give you the exact figure.

Q. Do you know who caused Yellow Taxi Company of Minneapolis to be formed in 1931? A. The Parmelee Corporation through Mr. L'Amoreaux.

Q. You mean Parmelee Transportation Company? A. Parmelee Transportation Company, yes.

Mr. Lynton: You may cross examine.

Cross Examination.

By Mr. Williams:

Q. How did you happen to reach Mr. Markin in Chicago? Did your try to get him some place else first? A. I don't
think I did. I knew Mr. Markin stayed in Chicago.
1670 Q. Did he have an office in Chicago at that time, to your knowledge? A. Well, I knew that he stayed at the Congress Hotel.

Q. Was he living there permanently? A. I don't know whether he was living there permanently. I had talked with Mr. Markin several times prior to this, not about this, because we were using his cabs, and I had always reached him at the Congress Hotel—not always, but most of the time.

Q. Were you using only his cabs at that time? A. You mean prior to the receivership?

Q. Yes, prior to the receivership, were you using only CCM cabs? A. No.

Q. Will you tell us about the proportion of CCM cabs to other makes you were using? A. Well, in 1923—up until 1923, we used Yellow cabs that were made by Yellow Cab Manufacturing Corporation, and we had some trouble with them, and they no longer furnished us cabs, and I came down to Chicago to visit down here and I checked into the advisability of purchasing Checker cabs.

1671 I looked at the Checker cabs that were on the street here and I thought they were all right. So we purchased Checker cabs in the latter part of 1923 or the first part of 1924.

Q. Did you purchase any cabs other than Checkers after that date? A. Yes, sir.

Q. Up to the receivership? A. Yes, sir, we did.

Q. Can you tell us about how your fleet was composed about the time of the receivership, what percentage, roughly, were Checkers and what percentage other makes? A. at the time of the receivership, there were very few Checkers left. As I remember now, we had about ten or twelve and the balance was Saf-T Cabs.

Q. How large was your fleet at that time? A. Approximately a hundred and thirty or a hundred and forty cars.

Q. About how many city licenses did you have at that time? A. I think it was a hundred and fifty-six.

Q. Did you approach anyone else to suggest that
1672 they buy in the assets at the receivership sale other than Mr. Markin? A. No, I did not.

Q. Why did you go to Mr. Markin? A. I went to Mr. Markin because I was interested personally. I had a selfish interest. I needed a job, and I wanted a job, and I had known Mr. Markin since 1922 and I always found him to be reliable, and I thought if he would come into Minneapolis and take over operation of the company that I would get a good job out of it.

Q. Did you first try to borrow money from Mr. Markin to buy it yourself? A. Borrow money from Mr. Markin?

Q. Yes. A. No.

Q. I believe you testified that the city licenses at the receiver's sale were to expire in February, shortly after the sale? A. That is right.

Q. Was there any reason why those licenses would not be renewed as a matter of course if the purchaser at the receiver's sale indicated that he was going to continue to run the company?

1673 Mr. LYNTON: I object to the question as being hypothetical.

The COURT: Sustained.

By Mr. WILLIAMS:

Q. For how long a period were those licenses issued by the City of Minneapolis at that time, during 1930 and 1931? A. The licenses ran from year to year, the fiscal year. They expired as of midnight, February 15, of each year.

Q. How long had the company that went into receivership had approximately 150 licenses, the number you referred to before; how many years? A. I think that they had the same number of licenses that whole year, that is from the year 1930 to 1931.

Q. What did they have from 1929 to 1930, do you know? A. No, I could not give you an answer to that.

Q. Do you know whether it was a radically different number, or was it about the same, without giving the precise figure? A. I think for the two years prior to the receivership, it was about the same. I remember
1674 a figure now in my mind of 174, and I think we did give up a few licenses ourselves, surrendered them. I think we came from 174 down to 156.

Q. Do you recall how many licenses were obtained in February of 1931 by the new company? A. As I say, I think it was approximately 156.

Mr. WILLIAMS: That is all.

The COURT: Any redirect?

Mr. LYNTON: Just a couple questions, if your Honor please.

Redirect Examination.

By Mr. LYNTON:

Q. How did the Saf-T Cabs happen to be bought by Yellow Cab towards the latter part of 1920? A. Well, we were using Checkers, and I was very well satisfied with Checker cabs for two reasons.

The main one I would say was our accident record. The Checker cab was a very sturdy cab, the body especially. We noted that after we would have an accident, we would very seldom have a personal injury due to the fact that the cab was so sturdy.

1675 And the second reason was this, that the maintenance was very low. We maintained these Checker cabs for less than a cent a mile.

Then there was the rider appeal. It was a larger cab. Our business increased from the time that we purchased the Checker cabs.

Q. How then did it come about that your company bought Saf-T cabs? A. Well, Mr. Sachs—

Q. Who is he? A. —who was the president of Yellow Cab at that time.

Q. Very well. Continue your answer. A. Met Mr. Dewese. I don't know how he met him, but he met him, and Dewese was selling this Saf-T cab.

Q. Who was Dewese? A. As I say, I don't know.

Q. What was his business? A. Mr. Sachs contacted Mr. Dewese and decided to purchase Saf-T cabs. I objected to that. I was vice-president of the company at that time and manager. Mr. Sachs was president and general man-
1676 ager. I objected to the Saf-T cab for two reasons.

The first one, I might say, was this: I have already stated that I was very well satisfied with Checker cab operation.

And the second thing is that they did not have the appeal to the rider that the Checker cab did.

Q. Do you know why Mr. Sachs was interested in buying Saft-T cabs? A. Yes, I do.

Q. Why? A. Well, I found out later that Mr. Dewese had promised Mr. Sachs an Auburn car if he would purchase Saf-T cabs. In fact, after the deal was over, and we had sold to the street car company, Mr. Sachs had Dewese in court trying to get this Auburn car that was promised him.

Q. While that company was being operated by the Street Railways, what was your position with the company? A. I was general superintendent.

Q. Was that your position up to the day of the receivership? A. No, I was made general manager of the
1677 company when the street car company sold their holdings to these business men in Minneapolis.

Q. Did you thereafter remain the general manager until the date of the receivership? A. I did.

Mr. LYNTON: No further questions.

Recross Examination.

By Mr. WILLIAMS:

Q. Did you buy Checker Cab Manufacturing Company cabs after the stock was acquired by Mr. L'Amoreaux?

Mr. LYNTON: I object to that. There is no testimony whatever that the stock was acquired by Mr. L'Amoreaux.

Mr. WILLIAMS: I will amend the question:

Q. After the assets were purchased at the receivership sale by Mr. L'Amoreaux— A. Repeat the question again.

Q. Did you buy Checker Cab Manufacturing Company cabs after the assets were purchased at the receivership sale by Mr. L'Amoreaux? A. I did.

Mr. WILLIAMS: No further questions.

1678 Redirect Examination.

By Mr. LYNTON:

Q. Incidentally, what type of cab is your fleet presently composed of? A. Well, we have all stock cars now, all Fords.

Mr. LYNTON: No further questions.

Recross Examination.

By Mr. WILLIAMS:

Q. Do you have an order for cabs pending with the Checker Cab Manufacturing Company at the present time? A. No, I do not.

Q. When did you last place an order with Checker Cab Manufacturing Company for cabs? A. 1941.

Mr. WILLIAMS: No further questions.

Mr. LYNTON: That is all.

The COURT: You are excused.

(Witness excused.)

The COURT: The court will stand recessed for ten minutes.

(Recess taken.)

1679 Mr. LYNTON: Mr. Laird.

WALTER S. LAIRD, called as a witness on behalf of the defendants, having been first duly sworn, was examined and testified as follows:

Direct Examination.

By Mr. LYNTON:

Q. What is your full name? A. Walter S. Laird.

Q. What is your residence, Mr. Laird? A. 1060 Norwood Avenue, Pittsburgh, Pennsylvania.

Q. Are you connected with Yellow Cab Company of Pittsburgh? A. I am.

Q. In what capacity? A. President.

Q. Is Yellow of Pittsburgh a merger of two prior corporations? A. It is.

Q. What are the names of those corporations? A. Yellow Cab Company of Pittsburgh and Pittsburgh Transportation Company.

Q. Was that merger accomplished as a result of
1680 an order of the Public Utilities Commission of Pennsylvania? A. It was.

Q. How long have you been in the business of operating taxicabs? A. 1912.

Q. Prior to 1929, were you connected with Pittsburgh Transportation Corporation? A. No, I was not.

Q. Prior to 1929 were you connected with Yellow Cab Company of Pittsburgh? A. I was.

Q. In what capacity? A. President.

Q. Prior to 1929, were both those companies operating taxicabs in Pittsburgh? A. They were.

Q. In 1929, did you know Mr. Ernest H. Miller? A. I did.

Q. Had you known him before that year? A. I had.

Q. Had you met with him before that year? A. I had.

1681 Q. With any degree of frequency? A. Quite.

Q. Who was Mr. Ernest H. Miller in and immediately before 1929? A. Mr. Miller operated a taxicab company in Newark, and I met him at the taxicab conventions which we had every year. He was successful in Newark, and then he moved over to New York and organized and operated the Yellow Cab Company, I think—I am not sure of the corporate name.

Q. Was it called the Yellow Taxi Corporation, New York? A. I think that was it.

Q. Continue, please. A. And he operated a very successful company in New York known as the Yellow Taxi Corporation.

Q. Was he well known in taxicab circles in that period of time? A. He was.

Q. Was he known in taxicab circles as an operator of taxicabs? A. He was.

Q. Did you have any conversation with Mr. Miller in 1928? A. I did.

1682 Q. Who initiated that conversation? A. I did.

Q. Where did that conversation take place? A. In New York City.

Q. Do you recall where in New York City? A. I do. At the Lotus Club on 57th Street.

Q. Who was present? A. Mr. Miller.

Q. And yourself? A. Myself.

Q. Were there any other persons present? A. There were not.

Q. You have stated you initiated that meeting, is that correct? A. I did.

Q .What did you say to Mr. Miller on that occasion? A. I went down to see Mr. Miller to see if I could get him to buy my taxicab company in Pittsburgh.

Q. And by that company, you mean Yellow Cab Company of Pittsburgh, do you? A. I do.

Q. What did you say to Mr. Miller in the opening of that meeting? A. Well, I just suggested to Mr. Miller
1683 that I would be interested if he would want to buy my company in Pittsburgh, which was owned by myself, brother and two sisters.

Q. What did he say? A. He said he was not interested.

Q. Is that the whole conversation? A. Well, there was a lot of ifs, ands and buts. It tok some time to get to that conclusion, but that was the conclusion at that time.

Q. Was that the substance of the conversation with reference to the possible sale of— A. Yes.

Q. —of Yellow Cab Company of Pittsburgh to Mr. Miller? A. Yes.

Q. Can you fix the time in 1928 of that conversation? A. Oh, I think it was in the summertime.

Q. Did you then leave New York? A. I did.

Q. Returned to Pittsburgh? A. I did.

Q. Did you have a conversation with Mr. Miller
1684 in 1929? A. I did.

Q. Concerning the sale of Yellow Cab Company of Pittsburgh? A. I did.

Q. Can you fix the time, approximately? A. Yes. The time was in about—late spring or midsummertime.

Q. Between the time of the first conversation concerning which you have testified and the time of this second meeting, did you have any discussions with Mr. Miller concerning the sale of Yellow Cab Company of Pittsburgh? A. Between the first conversation and the second conversation, no, I did not.

Q. Who initiated the conversation in the late spring or midsummer of 1929? A. I did.

Q. Did you go to New York? A. I went to New York again.

Q. Did you meet with Mr. Miller? A. I did.

Q. Do you recall where you met him this time? A. No, I don't. It is more than likely at the same place, be-
1685 cause he was a member of the Lotus Club.

Q. Do you recall whether any other persons were present at that conversation? A. No, there were not.

Q. What did you say? A. I said I had noticed in the papers that Parmelee Transportation had been formed, and I was wondering then if he had any further interest in buying my company.

Q. What did he say? A. He said there were possibilities, and we discussed it further and we arranged then

that he would sent a representative out to Pittsburgh to look over my company.

Q. Did he do so? A. He did.

Q. Who was that representative? A. Mr. Edward Higgins.

Q. Did Mr. Higgins make a survey of your company in Pittsburgh? A. He spent two weeks in Pittsburgh going over the company, and he brought in auditors and started over the books.

Q. Following Mr. Higgins' visit were there
1686 negotiations for the sale of your company? A. There were.

Q. Did you conduct them? A. I did.

Q. On behalf of your company? A. I did.

Q. And with whom did you conduct them? A. I conducted them primarily with Mr. Higgins, and then at the closing Mr. Miller came over and the consideration was passed.

Q. Were there any other persons who acted on behalf of Parmelee aside from Mr. Miller and Mr. Higgins? A. I think perhaps Mr. Fuller was their attorney at that time. There was an attorney representing them and I think it was Mr. Fuller. I am not sure but I think it was.

Q. Anyone else that you may remember? A. No.

Q. Let me ask you specifically, did you have any negotiations with Mr. Morris Markin? A. I did not.

Q. Concerning that? A. I did not.

1687 Q. Did you have any discussion with Mr. Morris Markin either in 1928 or in 1929 concerning the sale of Yellow Cab Company of Pittsburgh? A. I did not.

Mr. Lynton: You may examine.

Mr. Hotchkiss: No cross examination.

The Court: You are excused.

(Witness excused.)

Mr. Lynton: At this time, your Honor, I have a few documents.

First, I should like to offer into evidence the provisions of Paragraphs 6, 7 and 8 of Article Fourth of the Certificate of Incorporation of Parmelee Transportation Company, a Delaware corporation, filed April 12, 1929.

I observe that we have in this typed portion the provisions of Paragraphs 7 and 8, and that Paragraph 6 is omitted. I therefore, with the court's permission and with consent of government counsel, would like to offer the document with respect to Paragraphs 7 and 8, and read into the

record as a matter of evidence the provisions of Paragraph 6.

1688 Mr. Hotchkiss: Could you offer the whole certificate?

Mr. Lynton: I am interested only in these particular paragraphs. If you want to offer it, you can do so on part of your case.

Mr. Hotchkiss: We would suggest that the whole certificate be offered.

Mr. Lynton: I offer into evidence Paragraphs 6th, 7th and 8th of Article Fourth of this certificate. Is there any objection?

The Court: It is within the discretion of counsel to offer only those portions he chooses. You may offer the balance if you wish.

Mr. Hotchkiss: Will you supply us with the whole certificate so that we can ascertain whether we wish to—

Mr. Lynton: Of course.

Mr. Hotchkiss: Thank you.

(Said document so offered and received in evidence, was marked Defendants' Exhibit 16.)

Mr. Lynton: I should like to read the whole of Paragraph Eighth:

"Except as otherwise provided in Paragraphs 6
1689 and 7 of this Article Fourth, or as otherwise made mandatory by law, the holders of record of the common stock shall exclusively possess voting power for the election of directors, and for all other purposes, and the holders of preferred stock shall have no voting power."

Paragraph 6 reads as follows:

"Without the affirmative vote or written consent of the holders of three-fifths in amount of shares of preferred stock at the time outstanding the corporation shall not (a) change the preferences, rights or privileges of preferred stock; or (b) create, issue, change or convert any shares of any class into any shares of stock ranking as to dividends, assets or preferences prior to the preferred stock."

I shall not read Paragraph 7, which is rather long, which is part of Defendants' Exhibit 16, but I think I fairly summarize that paragraph when I state that Paragraph 7 provides that if Parmelee is in default for a period of two years so long as the default continues the preferred
1690 stock shall have the right to elect one-third of the board of directors.

I think I fairly summarize Paragraphs 6, 7 and 8 when I say that, except with respect to that right to vote on successive defaults for two years, in which event one-third of the board may be elected by the preferred stock, and except for the lack of right without the affirmative consent of three-fifths of preferred shareholders to change their rights, powers and preferences, the preferred stock of Parmelee has no voting power whatever.

Next, in accordance with consent of government, I should like to state as a matter of stipulation the following historical facts with respect to Parmelee:

On May 9, 1853 Frank Parmelee formed the firm of Frank Parmelee & Company to specialize in the transfer by horsedrawn coaches of baggage and passengers between railroad stations in Chicago.

In 1903 Frank Parmelee relinquished control of this firm, which was reorganized by Marshall Field, John W. Mitchell, Arthur Dixon, John C. Shaffer and other well-known Chicagoans, and was placed under the management of Charles A. McCulloch.

1691 In 1919 Mr. McCulloch and a group of associates acquired control, and the firm became known as The Parmelee Company.

The government so stipulates, does it not?

Mr. HOTCHKISS: Yes.

Mr. LYNTON: For the convenience of the Court, I should like to offer into evidence the opinion of Mr. Justice Fulton in the Illinois Supreme Court in the action entitled Yellow Cab Company against the City of Chicago, which the court has judicially noticed before.

Mr. HOTCHKISS: No objection.

(Said document, so offered and received in evidence, was marked Defendants' Exhibit 17.)

Mr. LYNTON: I offer into evidence a copy of the opinion of the Corporation Counsel of the City of Chicago, dated September 11, 1945, which this court has judicially noticed.

Mr. WILLIAMS: That is objected to.

The COURT: It is the opinion of the Corporation Counsel of the City of Chicago?

Mr. LYNTON: The court has already taken judicial

1692 notice of it. Do you now object to the offer of it into evidence?

Mr. WILLIAMS: We object to it going into evidence.

Mr. LYNTON: Then I will withdraw it.

Mr. WILLIAMS: On the basis of the objection—

Mr. LYNTON: We won't argue about it. I will withdraw it from evidence, and ask it be marked as an exhibit for identification, on the ground that the court has judicially noted it, that the government has consented to that judicial notice by the court, and I offer this merely as a matter of convenience for the court.

The COURT: It is received in evidence.

(Said document, so offered and received in evidence, was marked Defendants' Exhibit 18.)

Mr. LYNTON: I offer into evidence a sheet which refers to the provisions of the Chicago Code of 1911 and various other portions of the subsequent legislation, of which this court has taken judicial notice, and which refers to the display on the outside of a taxicab of the name of the owner.

Is there any objection to that?

Mr. HOTCHKISS: No objection.

The COURT: It is received.

1693 (Said document, so offered and received in evidence, was marked Defendants' Exhibit 19.)

Mr. LYNTON: I offer into evidence a portion of the proceedings of the City Council of the City of Chicago, under date November 26, 1935, concerning the reduction in the number of taxicabs.

Is there any objection?

Mr. HOTCHKISS: No objection.

The COURT: It is received.

(Said document, so offered and received in evidence, was marked Defendants' Exhibit 20.)

Mr. LYNTON: In connection with this last exhibit, Defendants' Exhibit 20, I should like to read the whole of this recommendation, which is very short. It is before the Public Vehicle License Commissioner. It is entitled, "Recommendation for consideration of the matter of a reduction in the number of taxicabs permitted to be operated in Chicago."

It is under date November 26, 1935.

"The City Clerk presented a communication submitted by the Public Vehicle License Commissioner, recommending consideration of the matter of a reduction
1694 in the number of taxicabs permitted to be operated in Chicago, which was referred to the Committee on Local Transportation."

1695 I offer into evidence a portion of the proceedings before the Public Vehicle License Commissioner—I should say Commission—under date of April 27, 1934,

concerning the then ordinances and pending hearings before the Commission.

Is there any objection?

Mr. HOTCHKISS: No objection.

The COURT: It may be received.

(Said document, so offered and received in evidence, was marked Defendants' Exhibit 21.)

Mr. LYNTON: This is a rather long, your Honor, therefore I shall not read it at this time. I merely state that it has reference to conditions existing on the Chicago streets.

Perhaps one paragraph might give the Court the gist of the consideration then pending before the Public Vehicle License Commission. I read:

> "The Public Vehicle License Commission has given the subject much consideration and is convinced that the maintenance of maximum rates of fare by ordinance to stimulate competition among operators and
> 1696 drivers of taxicabs is injurious to the public service and tends to reduce the compensation of taxicab drivers below the minimum wage required for a decent living, and is a menace to the safety of passengers, pedestrians and vehicular travel upon the streets. We therefore recommend the immediate establishment of reasonable uniform rates of fare to taxicab transportation to eliminate unfair competition with its attendant evils."

I should like to read into evidence Section 28-20 of the current ordinances of the City of Chicago governing the operation of public passenger vehicles and drivers in the City of Chicago.

That reads:

> "It shall be the duty of the driver of a taxicab to accept for transportation from and to any place within the city one person or a number of not more than five persons who apply for transportation as a group to him, provided that additional passengers under twelve years of age accompanied by an adult passenger
> 1697 shall be accepted for transportation if the taxicab has seating accommodations for them. No passenger shall be permitted to ride on the front seat with the driver of the taxicab."

If the Court please, I think that we have concluded our documentary evidence at this time.

We have one or two short documents which I shall submit tomorrow, and the witnesses for tomorrow have not

yet arrived, and I think we can finish, so far as we are concerned, tomorrow, if we can have the usual portion of the court day.

The COURT: Well, that is good news. That is all you have to offer today?

Mr. LYNTON: Yes, sir.

(Thereupon an adjournment was taken to 10:00 o'clock a. m. of the following day, June 9, 1948.)

1698 No. 46 C 1339

UNITED STATES OF AMERICA, PLAINTIFF,

vs.

YELLOW CAB COMPANY, *et al.*, DEFENDANTS.

Before Judge LaBuy

Wednesday, June 9, 1948,
10 o'clock a. m.

Court met pursuant to adjournment.

Present:

Mr. Hotchkiss
Mr. Williams
Mr. Lynton
Mr. Ginsberg
Mr. Fuller
Mr. Climenko

The CLERK: Case on trial.

The COURT: You may proceed.

Mr. LYNTON: Mr. Markin, you may take the stand.

MORRIS MARKIN, called as a witness on behalf of the defendants, having been previously sworn, testified as follows:

The COURT: You have been previously sworn, have you?

1699 The WITNESS: Yes.

Direct Examination.

By Mr. LYNTON:

Q. Are you president and general manager of CCM? A. I am.

Q. Did you know Mr. Ernest H. Miller in 1928? A. I did.

Q. Did you meet with Mr. Miller in 1928? A. I did.

Q. Who suggested that meeting? A. I believe it was through a telephone call.

Q. From whom? A. From Mr. Miller.

Q. To you? A. Yes.

Q. Was it then he who suggested that meeting? A. I believe so.

Q. Where did that meeting take place? A. As I recall it, I think it was at the Lotus Club, New York City.

Q. Do you recall what part of 1928 that was? A. I would say about the middle of the summer.

1700 Q. Was anybody else present at that meeting? A. I don't believe so.

Q. Did Mr. Miller open the conversation? A. He did.

Q. What did he say? A. He said that he was operating cabs in New York City, and he saw our new model, and he thought it was a very good car.

The COURT: Will you keep your voice up, please? I don't hear you very well.

The WITNESS: I will, your Honor.

Mr. LYNTON: Would it help if I questioned him from this angle?

The COURT: Yes.

By Mr. LYNTON:

Q. Did he say anything else at that meeting? A. I don't recall the entire conversation.

Q. Will you give us the entire substance of the conversation so far as you recall? A. Well, he thought that we had a good car. He was operating cabs in New York and Newark and he thought he would like to buy some of our cars.

Q. Was that the entire conversation? A. I believe so at that time.

1701 Q. Did you meet Mr. Miller again later? A. I did.

Q. At whose suggestion was the second meeting? A. I believe it was over to the showroom.

Q. In the showroom? A. Yes, in New York City.

Q. Did a conversation take place at that time? A. Yes.

Q. Between you and Mr. Miller? A. Yes.

Q. Was anybody else present? A. There was a lot of people waiting in the storeroom but the conversation was only between myself and Mr. Miller.

Q. What did Mr. Miller say on that occasion? A. As I recall, he stated that he would like to purchase our cars, but because of finances, he probably was not able to do it.

Q. Was this also in 1928? A. Yes, that was a little later.

Q. Have you now stated the substance of the conversation on this second occasion? A. To the best of my recollection.

Q. Did you meet with Mr. Miller later in 1928?
1702 A. We have had several meetings.

Q. And can you state the general months during 1928 when those several meetings took place? A. I don't believe I could state the months because it was only within a period of two or three months.

Q. Starting in the middle of the summer and continuing thereafter, is that correct? A. Yes.

Q. Did all these meetings to which you now refer take place in New York City? A. Yes.

Q. What was the substance of the conversations between you and Mr. Miller at those meetings? A. I believe the last meeting that I talked with him, he related the possibility to buy cabs providing the present owners could be purchased, in the event they could be.

Q. Was that what he said to you at that time? A. Yes.

Q. Did he say anything further? A. No, I don't recall. It has been so long, it is hard to remember what he said.

Q. Did he mention the name of any taxicab
1703 operating companies at that time whose interests might be involved? A. Yes, he did.

Q. What company? A. That involved the New York Yellow Taxi, Chicago Yellow Cab and Newark.

Q. As a matter of record, was the exact corporate name of the New York Company Yellow Taxi Corporation, New York? A. I believe it was.

Q. Was the exact name of the company in Chicago, Chicago Yellow Cab Company and Yellow Cab Company? A. Yes, there were two companies in Chicago.

Q. That is correct. Was the operating company in Chicago the Yellow Cab Company? A. Yellow Cab Company.

Q. And was the company which held the stock of the operating company Chicago Yellow Cab Company? A. Chicago Yellow Cab Company, yes.

Q. Was the company in Newark Yellow Cab Company? A. I think so.

Q. What else did Mr. Miller say with respect to the possible sale by the existing interests of their shares in
1704 these companies? A. He stated to me that he had a conversation with the owners, and he thought that they would be willing to sell their interest in the cab business.

Q. Was that statement made with reference to all three operating companies in New York, Chicago and Newark? A. Yes.

Q. Did he ask you to do anything with respect to that matter? A. He thought the finances could be found, and that a deal could be made.

Q. Did he say anything to you about the possibility of obtaining finances? A. He stated that the finances could be found, that he thought they could be bought.

Q. What did you say to that? A. I told him that I would look around and see if it could be arranged for financing.

Q. Was that the substance of those conversations with Mr. Miller? A. I believe so.

Q. After that, did you speak with any persons con-
1705 cerning the possibility of obtaining financing? A. I did.

Q. With whom? A. I spoke with the bankers of J. A. Sisto & Co.

Q. With whom of that company did you speak? A. I spoke with the head of the company, Joseph Sisto.

Q. Joseph A. Sisto? A. Yes.

Q. What was your conversation with him at that time? A. In substance, I related to him the conversations I had had with Mr. Miller.

Q. Did Mr. Sisto say anything to you in reply? A. He did.

Q. What did he say? A. He said, "If you will give us some information of these companies, we might be interested in financing."

Q. After that conversation, did you report it to Mr. Miller? A. I did.

Q. And, after you reported that conversation to Mr. Miller, what happened next? A. I think that Mr. Miller called Mr. McCullough and asked for an appointment.

1706 Q. Is that your recollection of what Mr. Miller mentioned to you? A. That is my recollection, what he told me.

Q. Was Mr. McCullough in Chicago at that time? A. He lived in Chicago.

Q. Did you and Mr. Miller go to Chicago following that conversation? A. Within a short period of time we did.

Q. Did you meet with Mr. McCullough at Chicago? A. I did.

Q. Who were the persons present at that meeting? A. Mr. Miller, Mr. McCullough and Mr. Moore.

Q. And yourself, is that right? A. I believe I stated that. And myself.

Q. Was anyone else present except you four? A. No.

Q. Who opened that conversation? A. Mr. Miller. This is the first time I met Mr. McCullough.

Q. What did Mr. Miller say? A. As I recall, he made a reference to that appointment and said that, "Charlie, we are here to discuss the possibility of buying your interests."

1707 Q. And by the phrase "your interests", what companies were involved? A. Only Chicago Yellow Cab, as I would see it at that time.

Q. Had Mr. Miller previously mentioned to you that he was representing the interests with respect to Yellow Taxi Corporation, New York? A. He did.

Q. At this time was Yellow of Newark under consideration for possible purchase? A. Yes.

Q. What did Mr. McCullough say at this meeting after Mr. Miller mentioned that you were there? A. He stated that his group had a certain number of shares of stock and that he represented that group.

Q. Are you referring to shares of stock of Chicago Yellow? A. Well, I consider them as one.

Q. And when you say "them", you are referring, I take it, both to Chicago Yellow and Yellow in Chicago? A. I am referring to the parent company.

1708 Q. Did Mr. McCullough mention at that time how many shares he represented? A. He stated that he would represent approximately between 100,000 and 115,000 shares.

Q. What next did he say? A. He said if a deal will be worked out that a commitment would have to be made to accept 115,000 shares, although their commitment was only to deliver 100,000 shares.

Q. After that statement was made, what next was said at that meeting? A. Well, I believe the price of the stock has followed.

Q. Did Mr. McCullough mention the price? A. He stated the price of the stock.

Q. What did he say in that respect? A. He says, "It will be $35 a share and no trading."

Q. After that, what happened? A. After that we have asked for operating statements.

Q. And by "we", do you refer to Mr. Miller and yourself? A. Mr. Miller and myself, yes.

1709 Q. Did Mr. McCullough show you operating statements? A. Yes.

Q. Were those operating statements of Yellow and Chicago Yellow? A. I believe they were consolidated. I don't recollect.

Q. And, as you recall it, the consolidated statement referred to the combined operations of Chicago Yellow and Yellow, is that correct? A. I believe they were consolidated.

Q. My question was only directed to the statement of which companies were in the consolidated statement. Were the companies that were in the consolidated statement Chicago Yellow, the parent, and Yellow, the operating company? A. Yes.

Q. Did you and Mr. Miller at that meeting look at those operating statements? A. We did.

Q. Did you discuss those statements between yourselves? A. Well, not at that meeting.

Q. After you looked at the operating statements, what next happened? A. As I recall, I have asked Mr.
1710 McCullough why they were selling their interests.

Q. And what did Mr. McCullough say? A. He thought that he has worked long enough and he wants to retire from active duty of his business.

Q. And was anything else said after that? A. Yes.

Q. What? A. I have asked Mr. McCullough if he was going to retire of the Yellow Cab Company, out of the active management, and still remain in Parmelee.

Q. And by "Parmelee" do you refer to The Parmelee Company? A. The Parmelee Company, yes.

Q. Did you know at that time that Mr. McCullough was Chairman of the Board of The Parmelee Company? A. I did not know that.

Q. Did you know at that time that Mr. McCullough had been associated with The Parmelee Company for many years? A. I knew he was the head of it.

Q. But you did not know what particular office he held, is that correct? A. I did not.

1711 Q. What did Mr. McCullough say about that? A. He said, "Do you want to buy it?"

Q. Did you answer? A. I said I didn't know, "What have you to sell?"

Q. What did he say? A. He said that—I asked him to, "Let's see what you have to sell." I asked for a statement.

Q. Did he show you a statement of The Parmelee Company? A. He did.

Q. And did you and Mr. Miller look at that? A. The four of us were there. Yes, we did.

Q. And after you looked at it, did you reply? A. I did.

Q. What did you say? A. I asked him what he wanted for it.

Q. What did Mr. McCullough reply? A. He said he wanted three million dollars.

Q. Did you or Mr. Miller make an answer to that statement of Mr. McCullough's? A. Yes. There was a great deal of cash in that, and we told him that bankers weren't interested in cash, eliminate the cash, what the price will be.

1712 Q. Do you recall approximately how much cash was shown in that statement of The Parmelee Company? A. My recollection is a little better than a million dollars.

Q. After you mentioned that to Mr. McCullough, what did he say? A. He says, "Then it would be two million dollars."

Q. Was there any further discussion at that meeting? A. I believe we have told him that we will take this back to the bankers and get their reaction.

Q. Was that the end of the meeting? A. Approximately.

Q. And after that meeting did you take this information back to the bankers? A. I did.

Q. And did you personally speak with the bankers? A. I did.

Q. Who were the bankers? A. At the first meeting I have only had a conversation with Sisto & Company, Mr. Sisto.

1713 Q. Did you report to Mr. Sisto the conversation which you and Mr. Miller had had at Chicago with Mr. McCullough and Mr. Moore? A. I did.

Q. And did Mr. Sisto make any statement in reply to that report? A. He stated that he will turn this over to his associates, statistical department, and examine the property.

Q. Sometime after that were other bankers associated with J. A. Sisto Company in connection with this negotiation? A. Yes.

Q. Do you recall what other bankers were so associated? A. I do.

Q. What were their names? A. Halgarten & Co., and White, Weld & Co.

Q. After this last meeting with Mr. Sisto, did you report your conversation with Mr. Sisto to Mr. Miller? A. I did.

Q. Did you have further conversations with the bankers?

A. Well, there were many discussions during
1714 that time.

Q. During the course of those discussions with the bankers, did the bankers say anything to you with respect to the employment of Mr. Miller in the event that any of these companies under consideration were purchased? A. Yes.

Q. What did they say? A. Well, they wanted to know about the operating head of this company, if the other people would step out who would operate those companies.

Q. And by "the other people stepping out", to whom do you refer? Mr. McCullough? A. Mr. McCullough and his associates.

Q. And what did you say? A. I think part of this entire negotiations were that Miller would head this operation.

Q. And by those negotiations you refer, I take it, to the discussions with the bankers? A. Yes.

Q. Did these bankers know Mr. Ernest H. Miller at that time? A. As the negotiations have progressed he was in in the negotiations and they knew him.

1715 Q. Before Mr. Miller participated in these negotiations, did the bankers know Mr. Miller? A. I don't believe so.

Q. Did they say anything to you about any participation by you as a person in connection with the possible operations of any of these companies in the event that the stock of these companies was purchased? A. That happened a little later, as the deal has progressed and it was apparent that the deal will materialize, they have discussed with me.

Q. And at that time what was said? A. I did not get your question.

Q. You have testified that as the negotiations progressed and as it seemed that a deal might be completed, that the bankers discussed with you a possible participation by you in connection with the operation of these companies, is that right? A. They did.

Q. I have asked you now, what was said by the bankers with respect to that? A. Well, there are several things that happened when the deal was approached to be closed.

One, they asked me to participate in the underwrit-
1716 ing. And, second, they asked Checker to participate in the underwriting, and also asked me to act in advisory capacity to Mr. Miller when the deal will materialize.

1717 Q. I would like to take up each of these three things separately, and if you please, I would like to take up the third first.

What did the bankers say to you in connection with your acting in a consultative capacity? A. I recall they said there was a great investment going to be made, and we are not familiar with the cab business, and you are, and we would like to have you participate in that so that we will be fully informed of the operations of the company.

Q. Did the bankers at that time suggest that you act in an advisory capacity to Mr. Miller? A. Yes.

Q. Was that the capacity which was discussed between the bankers and you at that time? A. I believe so.

Q. Now, you said that at that time the bankers suggested that you participate personally in the underwriting? A. They did.

Q. What did they say about that? A. Well, they stated that there was a great deal of money to be raised for a cab operation, and they thought that I ought to par-

1718 ticipate in this underwriting.

Q. By that, you mean that you should invest some of your personal funds in it? A. Personal funds, yes.

Q. Did the bankers suggest to you to what extent you should participate in the underwriting? A. Well, there was not a definite amount, but it was a good sized amount.

Q. What did you say to that? A. I told them that I could not participate to the amount they had suggested. I believe it was over a million dollars.

Q. Did you, in fact, purchase any of the shares of the new enterprise at a later time? A. I did.

Q. Do you recall how many shares you purchased? A. I purchased 15,000 shares, 14,000 for myself and 1,000 for Mr. Oakland.

Q. Do you recall the approximate total amount of money paid for those 15,000 shares? A. It was at the underwriting price. I believe it was twenty-one and a half dollars.

Q. Per share? A. Per share.

1719 Q. With a total of something over $300,000 is that correct? A. Yes.

Q. And you stated, third, that about this same time there was a suggestion by the bankers that Checker participate in this underwriting, is that correct? A. Correct.

Q. And by Checker, do you refer to Checker Cab Manufacturing Corporation? A. I do.

Q. That company is sometimes referred to in this suit as CCM, and I shall refer to it during this examination as CCM. What did the bankers say with respect to the possible participation by CCM? A. They stated that CCM ought to participate in this underwriting, too.

Q. Did they state to what extent? A. I believe they asked for two million dollars.

Q. Did they state what CCM should receive for this two million dollars? A. Common stock.

Q. Of the new enterprise? A. Of the new enterprise, yes.

1720 Q. What did you say to that? A. I told them that I did not think that CCM could participate to that extent, but I would take it up with the directors.

Q. Did you take it up with the directors of CCM? A. I did.

Q. And did you have discussions with several of those directors? A. I did.

Q. Did those discussions take place on more than one occasion? A. There were several discussions on it.

Q. What was the substance of those discussions? A. The substance was that the amount was too great, and that we didn't get to participate in common stock.

Q. Did you then report that to the bankers? A. I have reported this to Joe Sisto. He was heading the syndicate.

Q. And did discussions next take place between you and Mr. Sisto and some of the directors concerning the possible participation by CCM? A. Yes.

1721 Q. What was said then? A. Well, it was purely repetition, and the directors did not approve to buy common stock.

Q. Did the directors say to what extent CCM might be willing to invest in the new enterprise? A. After several discussions, we have agreed that we would take one million dollars of the debentures.

Q. What did Sisto say to that? A. He thought that the debentures were more marketable than the common stock, therefore he did not think that Checker should get debentures.

Q. When you use the term "marketable," do you mean salable to the general public? A. Yes.

Q. What did the directors of CCM and you reply to that? A. Well, we were definite, that we were not going to take common stock.

Q. Was there further discussions concerning the kind of stock or securities which CCM might receive for this million dollar investment? A. Eventually it resulted in creating one million dollars of preferred stock.

Q. Was the final investment of CCM in the new
1722 enterprise one million dollars of preferred stock of the new enterprise? A. Yes.

Q. After those discussions, did further discussions take place among the bankers and their counsel? A. There was a great deal of negotiations between the bankers, the syndicate and counsel as to the formation of the syndicate.

Q. At these discussions which you have now related, did you participate in any of the further discussions among the bankers, the syndicate and their counsel? A. I did not.

Q. Did you know what kind of a corporation was going to be formed to acquire the shares of the old company for the new enterprise? A. I had nothing to do with that and did not know.

Q. Did you know anything about the possible formation of a management company in connection with the new enterprise? A. Later I learned about that as my negotiations have progressed.

Q. Before the actual formation of Parmelee on
1723 April 12, 1929, did you know anything about the formation of a management corporation? A. I cannot recall the date, but I know that it was formed. The dates I cannot remember.

Q. Did you participate in any of the discussions with the bankers or their counsel leading to the formation of the management corporation? A. That was purely legal.

Q. Is your answer to that you did not so participate? A. I did not.

Q. Did you personally cause Parmelee Transportation Company to be formed? A. I did not.

Q. Did any lawyers acting for you personally cause that company to be formed? A. No, sir.

Q. Did CCM cause Parmelee Transportation Company to be formed? A. No, sir.

Q. Did any attorneys acting for CCM cause Parmelee Transportation Company to be formed? A. There was no participation in the formation on the part of any of the attorneys of CCM.

1724 Q. Do you know who did cause Parmelee Transportation to be formed? A. I believe that was the result of the bankers and lawyers, and Miller then was in the negotiations, and that was purely a managing company.

Q. Am I correct that in connection with those negotiations, you had no participation? A. I did not.

Q. You know, of course, that lawyers form the papers which compose the certificate of incorporation for a corporation, don't you? A. I believe so.

Q. Do you know whose lawyers caused the certificate of incorporation to be prepared and filed? A. It would be lawyers who represented Sisto & Co.

Q. Do you recall now the name of that firm? A. I do.

Q. What was that name? A. Chadburn, Hunt & Jaeckel.

Q. Had you, during the course of your discussions, as you have related, mentioned those discussions to the directors of CCM from time to time? A. Which discussions are you referring to?

1725 Q. I mean the generality of the discussions which you had with Sisto in the beginning, and then later as the negotiations progressed, and later as it became indicated that a new enterprise would be formed to purchase the shares of Chicago Yellow and Yellow of New York? A. Are you referring to the Checker directors?

Q. Correct. A. They were all familiar with it.

Q. You had mentioned that to them from time to time during the course of your discussions, had you not? A. Well, most of the directors of Checker were participating—knew about this entire deal, because they were mostly in Sisto's office.

Q. You refer, I take it, to some of the directors on the board of directors of CCM, who, in addition to being directors of CCM, were also partners or associates of J. A. Sisto & Co., is that correct? A. I believe so.

Q. You recall, do you not, that before these negotiations, J. A. Sisto had underwritten a public issue for CCM itself? A. Yes.

1726 Q. Was Yellow of Newark included in this new enterprise? A. It was not.

Q. During the negotiations leading to this new enterprise, was any taxicab company operating in the city of Pittsburgh mentioned? A. No, sir.

Q. Parmelee Transportation Company was organized on April 12, 1929, is that not correct? A. I cannot recall the exact date, the early part of 1929.

Q. Will you say with respect to that date, that that is, so far as you recollect, the approximate date of the incorporation of Parmelee Transporation Company? A. Yes.

Q. Did there come a time after Parmelee had been formed when mention was made to you of the possibility of purchasing stock in any taxicab company operating in the city of Pittsburgh? A. I believe a few months later there was a discussion.

Q. By a few months later, do you refer to a few
1727 months after the organization of Parmelee? A. Yes.

Q. Who mentioned that to you? A. Mr. Miller talked to me about it.

Q. Was that the first mention made to you of the possibility of purchasing stock in any operating company in Pittsburgh? A. Yes.

Q. At that time, was Mr. Miller the operating head of Parmelee? A. He was.

Q. And at that time, did you know of a corporation called Transportation Management Corporation? This is after the formation of Parmelee. A. Well, that was the management company that Miller headed.

1728 Q. You say that Miller headed it? A. Yes.

Q. And were you employed in a consultative capacity for Mr. Miller in connection with Transportation Management Corporation? A. I was.

Q. Did Mr. Miller mention to you the possibility of purchasing stock in a taxicab operating company in Pittsburgh in connection with your consultative discussions with him? A. I don't recall stock. He said that he thought that the Yellow Cab of Pittsburgh could be purchased.

Q. What did you say to that? A. In substance I advised him not to purchase the Yellow Cab of Pittsburgh.

Q. Did you say why? A. Yes.

Q. Why? A. I believed that the way Pittsburgh is located and the operations with reference to operating cabs is not a very favorable town to operate

Q. Why isn't it a favorable town to operate? A.
1729 Well, it is awfully hilly and more expensive to operate.

Q. And is that what you told Mr. Miller at that time? A. Yes.

Q. Thereafter did Mr. Miller negotiate for the purchase of stock of Yellow Cab Company of Pittsburgh? A. He did.

Q. Did you have any participation whatever in those negotiations? A. I did not.

Q. Even later did Mr. Miller discuss the possibility of purchase by Parmelee of stock of Pittsburgh Transportation Company? A. He did.

Q. Was Pittsburgh Transportation Company then also operating in the City of Pittsburgh? A. Yes.

Q. Did you have any discussion with Mr. Miller concerning that? A. I believe I have taken the same stand on the other company.

Q. Thereafter did Mr. Miller negotiate for the
1730 purchase of stock of Pittsburgh Transportation Company? A. He did.

Q. Did you have any participation whatever in those negotiations? A. I did not.

Q. Mr. Markin, do you know Mr. John J. Raskob? A. I do.

Q. When did you first meet him? A. I recall the latter part of the summer, I think, in 1929, or maybe earlier. During '29.

Q. During the year 1929? A. Yes.

Q. You say in the latter part of the summer or perhaps earlier? A. Maybe in the middle of the summer.

Q. When you and Mr. Raskob first spoke, was that by way of telephone conversation or personal conference? A. His office telephoned me and Mr. Raskob got on the phone and asked me if I would come down to see him at my convenience.

Q. Did you go to see him? A. I did.

1731 Q. Was this in New York City? A. Yes.

Q. At his offices? A. Yes.

Q. Do you recall where those offices were? A. I think they were in the New York Central Building, 42d and Park Avenue.

Q. When you met Mr. Raskob at that time, what did he say? A. He spoke to me about Checker.

Q. What did he say about Checker, and by "Checker" you mean CCM, do you not? A. CCM, yes. He wanted to know the prospects of Checker.

Q. Did he have with him any documents? A. He had what I call a prospective.

Q. By that you mean a forecast of some sort? A. A forecast of earnings.

Q. Of CCM? A. Of CCM, yes.

Q. Had you prepared that forecast? A. I did not.

Q. What did Mr. Raskob say to you with respect to that forecast? A. He asked me to look at that—

1732 Q. Did you? A. I did.

Q. Then what did he say? A. Then he asked me what I thought of that forecast.

Q. Did you reply? A. I did.

Q. What did you say? A. I told him in my opinion it was too optimistic.

Q. Was there any other discussion between you and Mr. Raskob on that occasion? A. There must have been some

other discussion with reference to Checker, but I don't recall exactly what.

Q. Did anything else happen at that meeting? A. Yes.

Q. What? A. I recall he picked up a telephone and telephoned Sisto.

Q. And by Sisto, do you mean Joseph A. Sisto? A. Joseph A. Sisto.

Q. And did you hear Mr. Raskob speak over the telephone on that occasion? A. Yes, it was in my presence.

1733 Q. What did he say? A. I recall he stated, "Joe, I have gone over that forecast which you sent me on Checker with someone who knows more about Checker than you do, and he totally disagrees with the prospective that you gave me."

Q. Have you now stated the substance of what was said and what happened at that meeting? A. Approximately.

Q. Did you sometime in 1930 meet with Mr. Raskob? A. I have met several times with Mr. Raskob after that.

Q. After that meeting did a time come when Mr. Raskob asked you to his home? A. Yes.

Q. Was that in 1930? A. I believe it was within a short time after that first meeting having taken place.

Q. Would that be towards the end of 1929 or in 1930, so far as you can recollect? A. I couldn't recollect. It was within a few months after several meetings.

1734 Q. Does it refresh your recollection if I mention that the stock market crash occurred in October, 1929? A. I remember that.

Q. Was this meeting with Mr. Raskob after the stock market crash of 1929? A. I couldn't place the exact time, if that was after the crash or before the crash.

Q. In any event, a time came when Mr. Raskob invited you to his home, is that right? A. Yes.

Q. And in connection with that invitation did he say anything to you about the persons who would be present? A. No, sir.

Q. Did you go? A. I was invited for dinner to his home one evening, and I did go.

Q. And when you arrived at his home, did he greet you? A. Yes.

Q. Did he say anything to you on that occasion? A. He did.

1735 Q. What did he say? A. He stated to me that, he says, "I want you to know that I am a large stockholder in CCM."

Q. Was there anything else of substance said at that time about CCM? A. No, there weren't any discussions about CCM that evening.

Q. Who else was present at Mr. Raskob's home on that occasion? A. There were four other people besides Mr. Raskob and myself.

Q. What were their names, if you recall? A. There were two du Ponts and Dr. Solomon, whom I did not know, and Governor Smith.

Q. And was the rest of the evening given to a social discussion? A. That is all.

Q. Some time after this meeting at Mr. Raskob's home, did Mr. Raskob send to the officers of CCM any representatives? A. He did.

Q. Do you recall the names of those representatives? A. I do.

Q. Who were they? A. One was Charles Hartman; and Robert Young.

1736 Q. Did those gentlemen from time to time visit at the offices of CCM? A. Very often.

Q. And did this continue during the first part of 1930? A. It continued during 1930.

Q. Does your hesitation indicate that it continued after 1930 too? A. It did.

Q. But at least it continued during the first part of 1930, did it not? A. Yes.

Q. And were the financial statements and affairs of CCM shown to these representatives of Mr. Raskob? A. Upon request, yes.

Q. And did they request it? A. Very often.

Q. And were they shown? A. Yes.

Q. And were those gentlemen present at the offices of CCM with great frequency during that time? A. I believe that Hartman eventually participated—

1737 Q. I would like to keep it to the year 1930, Mr. Markin. A. Well, I don't recall exactly the periods. But Hartman was more often than Mr. Young.

Q. And by that you mean that Mr. Hartman attended at the offices of CCM? A. Yes.

Q. More frequently than Mr. Young during that period? A. Yes.

Q. Did you know what interests besides his own Mr. Raskob represented at that time? A. I did not, but he stated that he and a group were interested in CCM.

Q. Did he ever state that that group included some of the du Ponts? A. Yes. He mentioned that.

Q. And were Messrs. Young and Hartman visiting at the offices of CCM on behalf of that entire group? A. I couldn't state.

Q. All you know is that Mr. Raskob sent them, is that correct? A. That is right.

Q. Did a time come in 1930 when Mr. Raskob spoke to you about Motor Cab Transportation Corpora-
1738 tion? A. Yes.

Q. Was that a corporation whose stock was owned solely by you? A. Yes.

Q. And did that corporation have subsidiaries which were operating taxicabs in New York City? A. Yes.

Q. Do you recall the approximate number of taxicabs operated in 1930 by those subsidiaries? A. My best recollection would be over two thousand.

Q. What did Mr. Raskob say to you about Motor Cab Transportation Company? A. He stated that he thought that because we have sold a lot of cars in New York to various operators, including Yellow Taxi, and that a good deal of our cars were sold on notes, that he believed it would be wise that I would stay out of operating in the City of New York.

Q. And by the word "we", do you refer to CCM had sold cabs? A. Yes.

Q. Did you have a number of discussions with Mr. Raskob and Mr. Hartman and Mr. Young concern-
1739 ing that? A. I have had several discussions, and in some of them Mr. Oakland participated.

Q. Considering these discussions as a group, is it accurate then that you and Mr. Oakland and Mr. Raskob and Mr. Young and Mr. Hartman participated in one or more of them? A. Yes.

Q. What was the substance of those conversations? A. In substance he told me that he believed that I ought not to operate, for the good of Checker and New York customers.

Q. And did he suggest that you dispose of your stock in Motor Cab Transportation Corporation? A. He did.

Q. And what did you say? A. I told him that I did not care to do that.

Q. And what did he then say? A. Well, after several meetings it was obvious that I would have to—

Q. And why was it obvious? A. Well, by that time I have discovered that they had a lot of stock.

Q. Do you know in general how much of the stock

1740 of CCM that group possessed at that time? A. In excess of 100,000 shares.

Q. Incidentally, do you recall how many shares of CCM you had at that time? A. About I would say around 20,000 shares.

Q. And was that the reason that it became obvious to you that you would have to dispose of your stock in Motor Cab Transportation Corporation? A. As the discussions progressed, I realized that that would have to be done.

Q. Did Mr. Raskob or his representatives suggest to you to whom you should sell your stock of Motor Cab Transportation Corporation? A. They did.

Q. Whom did they suggest? A. They suggested that I sell that to Parmelee Transportation.

Q. What did you say? A. I told them that I would not sell it to Parmelee Transportation.

Q. Did you say why? A. I did.

Q. Why? A. Because they were financially not
1741 able to pay for it, and I expected cash.

Q. Did they suggest that Parmelee might pay for the Motor Cab stock in some form other than cash? A. They did.

Q. What did they say in that respect? A. They thought that I should accept common stock for my—

Q. What did you reply? A. I told them I would not accept other than cash.

Q. After that did Mr. Raskob or his representative suggest that you sell your Motor Cab stock to someone else? A. I believe after several discussions they suggested that I sell Motor Cab Transportation to CCM.

Q. And were there discussions concerning that? A. Yes.

Q. Did you finally say that you would sell to CCM? A. Yes, I finally sold to CCM.

Q. Did you sell all your stock of Motor Cab Trans-
1742 portation Corporation to CCM?—A. Yes.

Q. Was that about September, 1930? A. It was during the year 1930. I don't recall the time.

Q. What did you receive in exchange for your stock of Motor Cab from CCM? A. I finally had to exchange for stock.

Q. For common shares of CCM? A. Yes.

Q. By the time of these discussions did CCM own any debentures of Parmelee? A. Yes.

Q. Do you recall that when CCM first placed $1,000,000 in Parmelee it purchased only preferred shares, is that not right? A. It was a special preferred stock, as I recall.

Q. But it was only preferred shares that CCM bought on the formation of Parmelee, is that not right? A. I think it was the preferred came after the debentures, not the preferred over the debentures.

Q. I don't believe I make my question clear to you. In connection with the original purchase, and I am not
1743 speaking of prior negotiations before the purchase, but in connection with the original purchase by CCM of securities of Parmelee in or about April, 1929, did CCM buy only preferred stock? A. Yes.

Q. Of Parmelee. At that time did CCM buy any debentures of Parmelee? A. It did not.

Q. By the time of the Raskob negotiations in 1930, however, you have testified that CCM did own debentures of Parmelee, is that right? A. Yes.

Q. From whom did CCM buy those debentures? A. From J. A. Sisto & Company.

Q. And was that after the stock market crash of October, 1929? A. Yes.

Q. And was J. A. Sisto & Company in financial difficulties at the time of the debenture purchase? A. Yes. Soon after they liquidated.

Q. Do you mean soon after CCM purchased those debentures J. A. Sisto & Company liquidated, is that correct? A. Within a short period.

1744 Q. In connection with the purchase of those debentures from J. A. Sisto & Company by CCM, did CCM also buy some common shares of Parmelee from J. A. Sisto & Company? A. I believe a small block.

1745 Q. And did CCM at that time also buy from J. A. Sisto & Co. some warrants to purchase stock of Parmelee? A. I think those warrants were attached to the common stock.

Q. Going forward again to the time of the Raskob negotiations, was there any discussion with Mr. Miller in connection with Motor Cab? A. Yes.

Q. Was Mr. Miller at that time president of Parmelee? A. Mr. Miller, I believe, was president from its inception and still was president of Parmelee.

Q. And at that time, did Mr. Miller discuss Motor Cab with any of the representatives of the Raskob group and you and Mr. Oakland? A. Yes.

Q. What was said by Mr. Miller in connection with those discussions? A. I believe the discussion was about Mr. Miller taking over the Motor Cab Transportation from CCM.

Q. When you say Mr. Miller, you mean Mr. Miller acting for Parmelee? A. Yes.

1746 Q. Was there any discussion by Mr. Miller concerning the debentures and the preferred stock of Parmelee which CCM then owned? A. I recall there was.

Q. What was that discussion? A. My best recollection is that Mr. Miller had suggested that in order to take over the Motor Cab Transportation from CCM that he thought that he could alleviate additional burdens in providing interest on debentures, and that he thought that ought to be worked out, to eliminate the debentures and the preferred stock.

Q. Do you refer to alleviating burdens on the part of Parmelee? A. Yes.

Q. Had Parmelee a lot of money at that time in 1930? A. No, Parmelee did not have any money.

Q. Do you recall the amount of the debentures which CCM then owned in Parmelee? A. In excess of a million dollars.

Q. If I suggest to you that the exact figure was $1,442,000, does that refresh your recollection? A. Well, it

1747 might have been that. I don't recall the exact amount.

Q. And the amount of the preferred stock of Parmelee then owned by CCM was still a million dollars, was it not? A. Yes.

Q. Did CCM, as the result of these negotiations, transfer to Parmelee all stock of Motor Cab Transportation Corporation? A. It did.

Q. Did CCM also transfer to Parmelee $1,442,000 of Parmelee debentures? A. They transferred all the debentures.

Q. Did CCM also transfer at that time the one million dollars of preferred stock which CCM owned in Parmelee? A. It did.

Q. Was that the entire transaction? A. To the best of my recollection, I would say yes.

Q. And did the Raskob-DuPont group and its representatives participate in all these discussions concerning that transaction? A. I believe that Hartman and Young were widely—I would say from the initiation of the deal to the consummation of the deal, they have nearly

1748 formed the whole deal.

Q. During this entire period of time, did the Raskob-duPont group continue, so far as you know, to own in excess of 100,000 shares of the stock of CCM? A. Yes.

Mr. LYNTON: You may examine.

The COURT: The court will recess for ten minutes.

(Thereupon a recess was taken.)

Cross Examination.

By Mr. WILLIAMS:

Q. You testified concerning certain conversations with Mr. Miller prior to the formation of Parmelee in April of 1929, and you mentioned a period of two or three months that those conversations continued. Can you tell me about when that period was? Was it prior to the formation of Parmelee? A. Prior to the formation of Parmelee.

Q. Was all of the stock of Chicago Yellow acquired that was planned to be acquired at the time of your discussions with Mr. McCullough?

Mr. LYNTON: I object to the form of the question. There was no testimony of a plan to acquire.

1749 Mr. WILLIAMS: I will withdraw the question.

Q. Was all of the stock eventually purchased, that is stock of Chicago Yellow, whose purchase was discussed with Mr. McCullough during the conversation you have testified about? A. I did not get the question, please.

Q. As I understand it, you discussed with Mr. McCullough the purchase of certain stock of Chicago Yellow. Now, was all of that stock purchased that was involved in that discussion? A. I don't think so.

Q. Will you tell us what stock was not purchased?

Mr. LYNTON: You mean the number of shares?

Mr. WILLIAMS: Who owned it, and about the number of shares and what it was.

By the WITNESS:

A. I did not know who owned it. So far as I know, we were committed to accept 115,000 shares and they were committed to deliver not less than 100,000 shares, and I believe there was about close to 110,000 shares that were delivered.

1750 Q. Do you know whether any attempt was made to purchase, at or about that time, to purchase more than the 110,000 that were actually delivered?

Mr. LYNTON: I object to that. Do you mean attempt by the McCullough interests?

Mr. WILLIAMS: Attempt by the interests with which Mr. Markin was working at that time.

Mr. LYNTON: I object to that question. I think it is confusing in connection with the question put.

Would you put it again?

Mr. Williams: Will the Judge rule on it?

The Court: I think the form of the question is all right. You may answer.

Mr. Lynton: Will you read it?

(Last question read by reporter.)

The Witness: There was no attempt at that time to purchase more than what was offered.

By Mr. Williams:

Q. At the time of your discussions with Mr. McCullough, did you have any information concerning how widespread the stockholdings of Chicago Yellow were other than
1751 the block controlled by the McCullough group? A. I did not.

Q. Didn't you know that there was not any other large block of stock controlled by a single group of Chicago Yellow?

Mr. Lynton: I think the witness has answered the question. He said he didn't know.

Mr. Williams: This is cross examination.

Mr. Lynton: I know, but you don't repeat questions even on cross examination.

The Court: It is repetition. He has answered it. Sustain the objection.

By Mr. Williams:

Q. Was there any discussion with Mr. McCullough concerning who were the other stockholders of Yellow, of Chicago Yellow? A. No, sir.

Q. Was that discussed at any time during your negotiations? A. No, sir.

Q. Was it discussed during your negotiations with Mr. Miller? A. No, sir.

Q. During your discussions with Mr. McCullough,
1752 was there any discussion concerning the condition of the Yellow fleet of cabs at that time? A. No, sir.

Q. Did you have any information at that time concerning the condition of that fleet of cabs? A. No, sir.

Q. Did you know from whom the cabs had been purchased? A. I knew—

Mr. Lynton: Do you mean the cabs which were then being operated by Yellow in Chicago?

Mr. Williams: That is correct.

Mr. Lynton: They manufactured those cabs themselves.

By Mr. Williams:

Q. Did you know about when that present fleet had been purchased by Yellow? A. I did not.

Q. At the time that the Sisto lawyers caused Parmelee to be formed, was the law firm of Chadburn, Hunt & Jaeckel also lawyers for Checker Cab Manufacturing? A. No, sir.

Q. Who were lawyers for Checker Cab Manufac-
1753 turing at that time? A. I don't recall having any special law firm.

Q. Did the Chadburn firm later become lawyers for Checker Cab Manufacturing? A. They did.

Q. Can you tell us about when that was? A. I believe that followed right after Sisto's interests, the formation of—no, I believe that followed after we were financed, CCM, by Sisto.

Q. That was in 1928, was it not? A. They were acting for Sisto. I don't believe they represented us then. I don't recall.

Q. As I understand your testimony, you don't recall then whether the Chadburn firm acted for CCM at the time that those lawyers caused the formation of Parmelee, is that your testimony? A. I believe that they did all the work, but I don't recall them being representing us at that time.

Q. I believe you testified that the Yellow Cab Company of Newark was considered for inclusion among the operating companies that eventually were acquired by Parmelee?

Mr. Lynton: I object to the question. That was
1754 not the testimony. The testimony was that during the early discussions that question was mentioned. It assumes a state of facts not proven.

The Court: Will you read the question?

(Last question read by reporter.)

The Court: You may answer.

By Mr. Williams:

Q. Is that correct? A. I testified, yes.

Q. Why was it not included? A. Mr. Miller wanted too much money for that company.

Q. I show you Exhibit 83. Is that the prospectus that Mr. Raskob had in his office at the time that you talked to him? A. No, sir.

Mr. Lynton: Would the record show that is not an exhibit in evidence?

The Court: It may so show.

By Mr. Williams:

Q. When did you purchase the stock of Motor Cab Transportation Company?

Mr. LYNTON: I object to the question. It assumes that it was purchased.

The COURT: Sustained.

1755 By Mr. WILLIAMS:

Q. When did you acquire the stock of Motor Cab Transportation Company? A. At the formation of the company.

Q. When was that? A. I believe that was in '28.

Q. Will you tell us about when in 1928? A. I say about during the middle of the summer. I couldn't recollect that exactly.

Mr. WILLIAMS: No further questions.

Redirect Examination.

By Mr. LYNTON:

Q. Was Mr. Albert Jaeckel the first individual in the firm of Chadburn, Hunt, Jaeckel & Brown whom you met in that firm? A. Yes.

Q. Was Mr. Jaeckel when you met him counsel for J. A. Sisto & Co.? A. He acted for them in that case. I don't know if he was general counsel.

Q. Was that before 1929? A. Oh yes.

Q. You were asked on cross examination concern-

1756 ing the date of the incorporation of Motor Cab Transportation Company. That company included as subsidiaries Black Beauty, Hamilton Peters and M.C.T. Co. Inc., did it not? A. I believe so.

Q. When you were testifying concerning Motor Cab Transportation Company, were you also including in your general testimony those subsidiaries? A. Yes.

Q. You were speaking as a business man rather than a date of legal incorporation, is that not right? A. Yes.

Mr. LYNTON: No questions further.

Mr. WILLIAMS: No further questions.

(Witness excused.)

Mr. LYNTON: Mr. Williams, may I request a stipulation with respect to certain financial conditions? It is very simple.

May I request that the following be stipulated as facts for the purpose of this action?

That the total assets and liabilities as of December 31,

1947, as reflected in their published statements, are

1757 the following for the following companies:

For CCM, $11,357,468.60, of which $5,802,415.23 is represented by the asset designated "Stock of Parmelee."

The total assets and liabilities of Parmelee as of that date were $11,217,313.23, of which $871,532.94 were represented by an asset designated, "Shares of stock of Chicago Yellow."

The total assets and liabilities of Chicago Yellow as of that date were $6,400,707.97.

Will the government so stipulate?

1758 Mr. WILLIAMS: I take it that those are the figures shown by the books; is that your statement?

Mr. LYNTON: They are the figures which are contained in the publicly distributed financial statements of the corporations as of that day, and I took December 31, 1947, because that is the last such statement.

Mr. WILLIAMS: We will stipulate on your statement of the fact, if it is a fact. I object to its admission on the ground of materiality. I do not see the materiality or relevancy. I object to it on that ground.

Mr. LYNTON: The materiality of it is it is one of the component factors in the general proposition.

The COURT: Objection overruled. It may be received.

Mr. LYNTON: Will the government also stipulate that in the city of Pittsburgh today there are 690 licensed cabs of which Yellow of Pittsburgh operates 485, and that in Pittsburgh the license situation is subject to daily change, because there is no limitation with respect to most of the licensed operators as to the number of cabs which they may operate?

1759 Mr. WILLIAMS: Do I understand that the stipulation relates to the situation only as of today?

Mr. LYNTON: That is what the stipulation asks that I have requested.

Mr. WILLIAMS: We will so stipulate on your statement. We do not have any knowledge of the facts, however.

Mr. LYNTON: The defendants rest.

THEREUPON, THE DEFENDANTS RESTED THEIR CASE.

Mr. LYNTON: Has the government any rebuttal?

Mr. HOTCHKISS: Your Honor, I believe yesterday the defendants offered in evidence a part of the certificate of incorporation of the Parmelee Transportation Company. At this time, the government wishes to offer in evidence the remainder of that certificate of incorporation of the Parmelee Transportation Company.

The COURT: Is there any objection?

Mr. LYNTON: Are there any material provisions other than those which we quoted?

Mr. HOTCHKISS: We feel that there is; for example, it sets forth the nature of the business of the corpo-
1760 ration and the objects and purposes to be transacted, promoted and carried on by it are as follows—

Mr. LYNTON: You mean you would like to have—

Mr. HOTCHKISS: Then it recites in detail the nature of the business, for which it is incorporated.

Mr. LYNTON: I have no objection to this, although, of course, the characterization by the government is not quite accurate with respect to it.

The COURT: It may be received.

Mr. HOTCHKISS: It will be received as Government's Exhibit 486.

(Said document, so offered and received in evidence, was marked Government's Exhibit 486.)

Mr. HOTCHKISS: The government has no rebuttal.

The COURT: So this ends all the evidence?

Mr. HOTCHKISS: Yes.

The COURT: Does counsel choose to submit briefs?

Mr. HOTCHKISS: The government wishes to submit briefs, but thought that the court might desire oral argument, possibly tomorrow, or closing statements.

The COURT: How long would you like to argue it?

Mr. HOTCHKISS: The government will take approximately an hour.

The COURT: And the defendants?

1761 Mr. LYNTON: If the court desires, I think we will not exceed that time.

The COURT: Would you want to start earlier tomorrow on account of our motions?

Mr. HOTCHKISS: We are perfectly willing.

The COURT: Would you want to start at 9?

Mr. HOTCHKISS: We would be perfectly happy to, your Honor.

The COURT: Very well. Tomorrow morning at 9 o'clock.

Mr. HOTCHKISS: I suggest, your Honor, on the question of setting a time for the filing of briefs—

The COURT: Yes, for briefs, how long do you request?

Mr. HOTCHKISS: I request for the government one month.

The COURT: Thirty days, and the defendant, thirty days thereafter?

Mr. LYNTON: The allocation of time to the parties is all right, your Honor, but we had hoped, subject to the court's own plans, perhaps the briefs might be in within a shorter time.

The COURT: Well, can the government shorten the time?

Mr. HOTCHKISS: Well, your Honor, the govern-
1762 ment will make every effort to get the government's brief in by the end of this month. It so happens we have a number of other matters pending which do demand a good deal of time. If it is possible, we will get them in in the very shortest time possible.

The COURT: Suppose the court sets June 30th, and in the event something comes up that you cannot finish your brief, you can take it up for an extension?

Mr. HOTCHKISS: Very well.

The COURT: As long as the defendants are anxious to dispose of it early, suppose you take fifteen days?

Mr. LYNTON: Very well.

Mr. HOTCHKISS: And for a reply, your Honor—

The COURT: Then that will run into vacation time, but I can announce my decision during the vacation period, and you will be notified.

Mr. HOTCHKISS: Your Honor, the government might wish to file the reply brief.

The COURT: That is right.

Mr. HOTCHKISS: Say ten days.

The COURT: Ten days thereafter.

Mr. LYNTON: All right.

1763 The COURT: Very well, tomorrow morning at 9 o'clock.

Renewal of Defendants' Motions.

Mr. LYNTON: If your Honor please, there is one more matter I would like to make a matter of record in this case. I should like, at the conclusion of all the evidence, to renew all the motions made at the conclusion of the government's case with respect to objections as to materiality, relevancy and competency of certain of the evidence introduced by the government.

The COURT: The motions are all overruled.

This case stands recessed until 9 o'clock tomorrow morning.

(Thereupon an adjournment was taken to 9 o'clock a. m. of the following day, June 10, 1948.)

1764 No. 46 C 1339

UNITED STATES OF AMERICA, PLAINTIFF,

vs.

YELLOW CAB COMPANY, *et al.*, DEFENDANTS.

Before Judge LaBuy

Thursday, June 10, 1948,
9:00 o'clock a. m.

Court met pursuant to adjournment.

Present:

Mr. Hotchkiss
Mr. Williams
Mr. Lynton
Mr. Ginsberg
Mr. Fuller
Mr. Climenko

The CLERK: The case on trial.

Opening Argument on Behalf of the Government.

By Mr. HOTCHKISS:

May it please the Court:

In this case the Government charges that the defendants violated Sections 1 and 2 of the Sherman Act, and I need not labor the recital of the charges and allegations in the complaint beyond stating that the charge is a two-
1765 pronged one; one prong directed at the allegation that the defendants have conspired to restrain and monopolize the sale of cabs to certain cab operating companies; the other prong being directed at the allegation that the defendants have combined and conspired to restrain and monopolize interstate trade and commerce in what we have described, during the course of the trial, as the inter-station business between railroad stations in Chicago, that business consisting of the carrying of passengers and their baggage from one station to another in connection with their railroad journeys and pursuant to contracts and understandings and agreements with the railroad stations.

Now, the charge in the case is basically a simple one.

The evidence, however, in support of that charge has been rather voluminous and somewhat complex.

The basic reason for this fact is that this case is a conspiracy case, and ordinarily, as a matter of fact very seldom can conspiracy be proved by pointing to a single

1766 piece of paper or a single conversation, and saying that there in that paper, or there in that conversation is the sum total of the illegal agreement which constitutes the conspiracy.

It is necessary in a conspiracy case such as this to spell out the illegal agreements from the acts of the defendants and of the parties, and from their course of conduct, and it is not even necessary in spelling that agreement to show that there was a specific agreement in so many words.

It is sufficient for the Government, if it proves that there was a meeting of the minds among the defendants, that their minds met in a uniform course of conduct.

Now, in meeting this burden and standard of proof in this conspiracy case, the Government has relied on certain rather elementary principles of law with which the Court is of course well acquainted.

I will refer to those principles so that the Court may be informed as to the Government's thinking on those points.

1767 In the first place, in proving the existence of a conspiracy, it is not necessary for the Government to prove that the conspiracy sprang into existence full grown.

The facts of most conspiracies show that conspiracies are emerging things, are developing things, and they change the ways and means, and the ways and means to achieve the basic purpose of the conspiracy change from time to time, and so it is in this case.

The facts show that from time to time there have been changes, that new parties have been added, and that the complete plan in all of its aspects did not go into effect *ab initio*.

For example, when the Parmelee Transportation Company was formed, it took over only three companies—I am a little incorrect in my statement. It secured an interest in only three companies.

One, the Yellow Cab Company of New York; two, a stock interest amounting to less than thirty percent in the Chicago Yellow of this city, and three, the Parmelee Company, which was then engaged in this inter-station operation, transporting passengers and their luggage.

1768 Thereafter, more acquisitions were added to that original list. The conspiracy in this case developed gradually.

Second, a conspiracy case cannot be treated piecemeal. It is conceivable, and the courts have so held, that each

single act done by any one of the defendants in a conspiracy may, in and of itself, be perfectly legal and perfectly proper, but when the sum total of the effects of all those acts is added up, there may be an illegal conspiracy, and the courts have held that the conspiracy must be treated and studied and regarded, not in terms of those separate acts, but in terms of the sum total impact and effect and significance of all the acts done by the parties.

Another factor that the Government takes into consideration is the legal principle that the parties are presumed to have intended the consequences and effects of their acts.

This is an important principle in connection with this case, because we find, for example, frequently there may be a particular act or a particular course of conduct which, localized and isolated from the whole conspiracy,
1769 may appear to have a very narrow objective and actually, when considered in terms of its effects and significance, be tied in with the whole conspiracy.

For example, the defendants might show that there was an attempt to establish a local cab operating monopoly in the City of Chicago, and their evidence does show an attempt, when it is considered by itself, but in terms of the significance and effect of that particular objective, we find that the overall effect of it was that the parties intended by that establishment of a local cab monopoly to protect the Parmelee Transportation Company in its interstate business.

Thus, likewise the evidence shows that there were many inter-company loans and gifts.

Now, considered in and of and by themselves, without regard to any other factor, it may be said that the loans and gifts were made to maintain the financial strength and stability of the individual companies.

Actually, we may take into consideration, in connection with those loans, that it was very vital, in connection with the purposes of the conspiracy, that each of the mem-
1770 bers be kept in financial health.

For example, on that point the Court will recall that at one time the Parmelee Transportation Company acquired all of the stock and assets of the Motor Cab Transportation Company and its operating subsidiaries in New York City which operated some two thousand taxicabs.

During the depression, Parmelee lost those companies. They went through insolvency, and those companies could no longer be customers of CCM for the cabs which CCM

was making and selling in interstate trade and commerce.

Therefore it was essential that as among the defendants they aid each other in maintaining that financial strength.

Then the final basic general principle that the Government relies on is the fact that good intentions on the part of the parties are no excuse for violation of the Sherman Act.

It is not necessary for me to discuss in detail the decision of the Supreme Court in the Yellow Cab case.

I consider that case, of course, establishes the pat-
1771 tern of law applicable to the general facts of the case.

Really, it holds that there was interstate commerce involved, and if the facts of the case with respect to restrain and monopoly which is charged are sustained, then a violation of the Sherman Act is shown.

Now, I wish to point out that that opinion of the Supreme Court deals in its Section 3 with certain so-called local aspects of the case. It deals particularly with the aspect of cab operations in the City of Chicago and the transportation of passenger locally by cab companies from railroad stations to their homes.

The Supreme Court held that that transportation and that commerce was local commerce. It very specifically qualified this holding. They said that all that they held is that this commerce is local when not connected with any other factor.

In other words, if the only thing involved in this case was a restraint between the two local taxicab companies, unconnected with any other interests, then no offense or violation of the Sherman Act would be shown.

But it is a different matter when these operations
1772 are connected and linked with the larger national aspects of the conspiracy.

Now, as to the facts in this case, I want to deal only with certain salient ones:

First, as to the relationship between the parties in the early stages of the conspiracy, and after they had had what you might term a shakedown cruise.

First of all, there is the Checker Cab Manufacturing Company, a defendant, that manufactures purpose built cabs. It owns the majority of the stock of Parmelee Transportation Company.

Parmelee Transportation Company, in turn, owns approximately, something like thirty percent of the voting stock of the defendant, Chicago Yellow.

The defendant, Chicago Yellow, in turn owns all of the voting stock of Yellow which is the cab operating company in Chicago.

I point out further with respect to Parmelee Transportation Company that it did own virtually all of the stock of certain companies, Chicago Yellow, Yellow Taxicab of New York, which subsequently became the National Transportation Company, and also the stock of the two
1773 Pittsburgh companies which became merged in one, and also controlled the stock of a Minneapolis company.

The next defendant is the Cab Sales Company, Cab Sales and Parts.

Now, all of the stock of that company is owned by the defendant, Morris Markin.

In turn, Cab Sales owns a substantial block of the stock of the Checker Cab Manufacturing Company. Morris Markin also owns a block of stock in CCM.

When we add the Cab Sales holdings and the Markin holdings in CCM, we find that the two of them have close to one-half, almost one-half of the stock of CCM.

Cab Sales in turn owned virtually all of the stock of Checker Taxi Company. Then we have Markin, who is of course the President of CCM.

I refer to this relationship between the parties at the outset because of the integration of the corporate structure in this case is of vital importance in determining the issues which are raised.

1774 I quote briefly from the Crescent Amusement case, decided by the Supreme Court in 1944. It is 323 U. S. 183.

This case expresses well the point of view of the Supreme Court with respect to this question of affiliation, and its relationship to conspiracy.

The court said:

> "The fact that the companies were affiliated induced joint action and agreement. Common control was one of the instruments in bringing about the unity of purpose and the unity of action and in making the conspiracy effective."

The effect of the integration and its common control and this relationship between the defendants in this case is beautifully illustrated here.

For example, the testimony of the defense witnesses in particular has shown that there is no agreement among the

operating companies in this Parmelee structure that they will buy cabs exclusively from the Checker Cab Manufacturing Company, or there is no contract requiring them to so buy their cabs exclusively.

1775 There was, your Honor, no need for any contract, because the parties to this conspiracy understood full well that the operating companies were expected to buy their cabs from CCM and from no one else unless some emergency, such as war-time conditions, interposed and they could not get their cabs from CCM.

And the facts show that in the very first meeting held by Checker Cab Manufacturing Company with respect to this organization of what turned out to be the organization of Parmelee, that the Chairman, Mr. Markin, stated in substance to the members of the Board of Directors that "this is a good plan because it will bring about constantly recurring orders for our cabs from these operating companies which are brought into the affiliation".

It is significant to note that although none of the operating companies brought into this integration had bought Checker cabs exclusively prior to the time this conspiracy started, and prior to the time they adhered to it, some of them had bought a few Checker cabs, that immediately upon their joining the conspiracy, they began buying

1776 Checker cabs, and they continued buying Checker cabs right through the whole period of the conspiracy with the sole exception that when Checker Cab Manufacturing Company, for purposes best known to itself, specifically exempted a company from buying—one of the affiliated companies from buying the Checker cabs, and the other exception is during the war when the Checker Cab Manufacturing Company was not manufacturing, and the companies had to go out and buy their cabs elsewhere.

Now, the power of this integration to secure an agreement and understanding with respect to this question of the purchase of cabs is beautifully illustrated with respect to what I describe as the fight which occurred over the election of directors of Chicago Yellow and Yellow in 1934 and 1935.

I want to point briefly to the fact. First, Frank Fulton was a director of both Boards in 1934. On December 17th, 1934, he wrote a letter to the Board of Directors of Yellow, and in that letter he criticised Yellow for buying the purpose built cabs, and he suggested that Yellow should buy

1777 the lighter stock model cabs, or should give it serious consideration.

Now, it is highly significant that less than one month after Frank Fulton wrote that letter, on January 15, 1935, the defendant, Morris Markin, telephones Samuels of Yellow and Chicago Yellow and ordered him to eliminate Fulton and another director from the Board of Yellow.

Now, I use the word "eliminate", because in one of the exhibits, consisting of a letter of protest from Samuels to being requested to do this, he used the word "eliminate".

Mr. Samuels fought back, and in a letter to Attorney Fuller, he made this statement:

"I and every member of this Board was placed there by Parmelee".

In March of 1935, a little more than three months after Fulton's original letter, Yellow refused to place an order for cabs with CCM unless CCM agreed to certain conditions.

Now, the battle went on. The next fight we have is the one in May, two months after this refusal, Markin sends a wire to Samuels making a protest regarding their
1778 voting the stock of Waverly to elect their nominees to the Yellow Cab Board.

The matter was finally settled in December, 1935.

Now, it should be borne in mind that at the time these earlier episodes I am speaking of were occurring, Parmelee had less than thirty percent of the stock of Chicago Yellow.

Now, in December of 1935, a general settlement occurred which resulted in strengthening of Parmelee's stock control over Yellow and Chicago Yellow.

The Waverly Company which had been organized by Yellow to hold certain stock which Yellow then held had about 130,000 shares of Chicago Yellow stock.

1779 This stock was disposed of in the following manner: 100,000 shares of it was turned back over to Chicago Yellow and retired, which brought the total stock issue of Chicago Yellow down from 400,000 shares to 300,000 shares. Obviously, just on that basis, with Parmelee holding the same number of shares, its percentage of control was larger on a 300,000 share basis than on a 400,000 outstanding issue share basis.

Second, 25,000 shares out of the whole block of stock were sold to a Mr. Lee Kelley. The personality and identity of Mr. Lee Kelley are rather shrouded in mystery. The evidence does show that Mr. Kelley was either, as holding the stock himself or as a nominee for someone else, affiliated

with and allied with and friendly to the Markin interests. Suffice it to say that from that time on the Lee Kelley stock always was voted with the Parmelee stock when any need for voting arose, and if the proxies were not forthcoming on the Kelley stock the officers of Chicago Yellow would write to Mr. Markin, asking him to get the proxy on the Kelley stock. The final block of 6,000 shares was distributed to the officers of Chicago Yellow.

1780 The combination of increasing Parmelee's percentage of voting control over Yellow—and Chicago Yellow, I should say—plus the weight of the Kelley stock, swung the corporate power clearly over to the Parmelee interests, and it is significant that the evidence shows that from that time forward Yellow and Chicago Yellow raised no further formal protests with respect to their buying of cabs from CCM.

Parenthetically, I want to state that there is a good deal of evidence in the case as to how very good the Checker cabs are. It is not, it seems to me, an issue here as to whether the cabs are good cabs or bad cabs. Whether they are good cabs or poor cabs, their sale should not be made on the basis of excluding other companies, other manufacturing companies, from the opportunity of competing in the market which consists of the companies which buy cabs. If the cabs are good, being special purpose-built cabs can stand, as it were, on their own wheels in meeting the competition from other sources.

1781 I have mentioned the power of this integration in bringing about a meeting of minds with respect to the purchase of cabs. Now I want to turn for a moment to the power of the integration, this integrated structure, to produce a meeting of the minds and an agreement among the defendants with reference to their protecting Parmelee and its inter-station transfer business from competition.

The evidence shows there is nothing particularly complex about this inter-station business. You have to have some cabs, coaches, to pick up the passengers. You need a railroad time-table to know when the trains are coming in, and you need to have a spot in the station where you can pick up the passengers, and you need to have a driver who is sufficiently competent to drive that bus or that coach from one station to another station. You need to have some garage facilities to garage the equipment. You need some trucks to carry the luggage of the passengers which

has been checked through on the railroad. You need a starter to pick up the tickets. You need an accounting system with the staff intelligent enough to be able to count these stubs that are picked up from the passengers
1782 and to determine to which railroad those stubs are going to be charged and to make the billing accordingly.

Now, on that basis of the evidence in this case, that is the extent of the complexities of the Parmelee inter-station business. Officers of the defendants have testified that they had no agreement not to compete with Parmelee; that they never entered into such an agreement. Well, your Honor, I think it would be one of the most astonishing things that I could encounter if there were a written or an oral agreement spelled out among the defendants, the local operating companies, not to attempt to compete for the Parmelee business. The answer is that they all understood full well as a result of each one's position in the integrated corporate structure what each one's position was. There was no need for any agreement beyond the fact that there was at all times a clear-cut, an unmistakable meeting of the minds and an understanding among the parties. The local cab operating companies in the integrated structure knew and understood they were not to compete with Parmelee, and they did not, and it is impossible to conceive of their
1783 ever doing it in view of the corporate relationships existing.

The evidence will show, and has shown, that in order to accomplish the purposes of this conspiracy the defendants found it necessary to eliminate competition in the cab operating field in Chicago.

Going back to a certain settlement which occurred in 1930 between Checker and CCM, those two companies had been involved in long and bitter litigation. Checker was a cab-operating company which had grown rapidly from some 100 cabs back in the early twenties to the point that it had close to 2,000 cabs. I forget the precise number, but it was close to 2,000 cabs in or about 1929.

It was in litigation with CCM. This litigation was settled and the settlement is significant in terms of the purpose of the defendants to monopolize the sale of cabs, because this agreement bound Checker to see to it that the driver-operators bought only CCM cabs. That provision was spelled out in that lengthy contract in every conceivable way in which the mind of astute counsel can conceive it. It was spelled

out forwards and backwards and upside down. There
1784 was no mistaking that requirement. It even had a provision in it that Checker Cab Manufacturing would require the DeLuxe cab to buy its cabs from Checker Cab Manufacturing exclusively.

That agreement is signed and sealed and delivered and Checker must buy Checker cabs. But the trouble is at that point, as far as the members of this conspiracy are concerned, that Checker is still a free and an independent agent. It may go out and compete all it wants in any field in the city of Chicago, including, if it so desires, entering into competition with Parmelee.

Now, there was considerable bitterness between the parties. Mr. Samuels on examination I believe indicated that Checker at that time would not sell its stock to Yellow. Checker had to be brought into the integrated structure. The trouble was, or one of the troubles was there was a depression going on. Parmelee was hard up and could not spare the cash to go out and buy Checker. Fortunately for the members of the conspiracy the defendant Yellow had a nice fat treasury. So Cab Sales,
1785 which was run at that time by an affiliate of Markin, Cab Sales thereafter becoming a wholly-owned creature of Markin's, then borrowed from Benzoline, a subsidiary of Chicago Yellow, $500,000.

The evidence is clear that Benzoline knew at the time it made this loan that Cab Sales was going to use it to buy control of Checker. The loan was made and Yellow loaned Benzoline the money to make the loan, and the deal was coupled with a gasoline-selling contract, and possibly the defendants may contend that the gasoline-selling contract was the primary consideration.

The fact of the matter is that the relationship between the parties in the integrated structure was such that if control was secured over Checker there could be no question but that Checker would make a deal, or Cab Sales would make a deal, whereby their requirements of gasoline would come from Benzoline.

A little later Waverly, an affiliate of Yellow, made a loan of $200,000 to Cab Sales to enable Cab Sales to buy up most of the balance of the Checker stock, and Yellow loaned Waverly the money which was needed for that.
1786 Checker's stock was then owned 97 per cent by Cab Sales, which was in turn, or became owned in full by Markin, who was the president of CCM, and who with CCM

owned close to half of the stock of CCM, which in turn owned a majority of the stock of Parmelee, which in turn owned a substantial and controlling interest in the stock of Chicago Yellow.

And suddenly we find that Checker is no longer an independent, free-will, but its mind has been brought into the groove with the other defendants.

The defendants had a haunting fear of competition in Chicago. That fear was expressed very early when Parmelee was negotiating for the purchase of DeLuxe, and Mr. Miller, the head of Parmelee, reported to Parmelee's board and said, and I quote:

"Companies not now operating in Chicago would be glad to pay more for the DeLuxe Motor Cab Company."

Of course, if other companies got control of DeLuxe it might not buy cabs from Checker Cab, it might conceivably even start competition in this inter-station business.

1787 We go on a short time later when the defendants were considering the establishment of the Chicago Cab to take over De Luxe and some outside cab interests in Chicago, and Mr. Markin reported to the board of Checker Cab Manufacturing Company in 1932 with respect to that and he said that to permit such a transfer, that is, the transfer of DeLuxe to Chicago in this general merger, would also assist in preventing interests hostile to this group from obtaining a competitive position in Chicago.

Parmelee was included in that competitive picture, as was also the question of the sale of cabs which could always be assured to companies that were in the affiliated structure.

I point out parenthetically that the evidence shows that DeLuxe and Chicago Cab bought only a very few CCM cabs after they were brought into the affiliated structure. The reason for that is shown in the evidence that the companies were washed out in a short time after they were so bought out.

1788 Of course, the government has brought out this long history of fighting on the part of defendants to limit the number of licenses in Chicago. The government has shown I think conclusively a long history on the part of Yellow and of Checker of getting licenses to operate taxicabs and just putting those licenses on the shelf and not using them for the purpose of operating cabs.

The government has shown that they kept some old and outmoded equipment on which they could secure a license, and show that they had a cab, without respect to whether it

could operate or not. They even at one time, in order to be assured of having some show, some color of right to the licenses, secured titles on cabs which were located up in New York and which remained in New York for a full year after the titles were sent to Chicago.

Huge sums were paid out by Yellow to keep these licenses out of the hands of competitors, even though Yellow did not use the licenses, and the same with Cab Sales and Checker.

The purpose of all of this is beautifully and succinctly expressed by Mr. Samuels of Yellow and Chicago Yellow. The court will recall that during the course of the cross examination of Mr. Samuels he was asked why he
1789 did not surrender some five hundred odd licenses to the city and save himself the necessity of paying $85 a year in license fees, and save having to make a payment to Checker, and he answered:

> "This is a very simple proposition. It was only a matter then of creating another outfit that had a right to those licenses that would be in competition with us. We were trying to get the number boiled down so that there would not be any competition on the street against our own men. There is no sense in giving them over to the city to peddle out again."

In December of 1937 the city passed an ordinance relating to taxicabs. Under that ordinance operators could, if they wished, surrender licenses so that they could bring the total number of licenses down to 3,000 in the city.

Long before that ordinance was passed Yellow and Checker and Cab Sales by agreement among themselves, agreement directed from an officer of Parmelee, had already commenced and carried far forward this reduction in licenses.

1790 Then there were negotiations between Checker and Cab Sales regarding the matter of Yellow paying out of its treasury to Checker for reducing and surrendering licenses. The facts as shown in the evidence are that this reduction was to come out of the Checker-driver-owned fleet; that that fleet was an old and rather decrepit fleet; that really there was no need for any contract between these parties because of this integrated structure under which all of the parties were subject to a common control. However, Yellow under this contract did pay Checker to reduce and surrender a large number of licenses.

It is the contention of the government that the evidence shows that that payment was one made without considera-

tion and was actually an inter-corporate gift from Yellow to Checker. Afterwards, of course, Yellow and Checker asserted so-called contract rights under this city ordinance to continue to keep out competition.

The evidence shows clearly the fear which defendants had with respect to any competition which might affect Parmelee. For example, Mr. Fuller in a letter to
1791 Mr. Rank says, back in 1939, about some proceeding before, I think, the Interstate Commerce Commission or some similar agency:

"The purpose of proceeding was to claim some semblance of a franchise to handle baggage transfer business with the railroads in Chicago, thereby excluding competition in that field."

Then he goes on to say:

"Of course no competition has arisen in the last ten years."

Note, this letter was written in 1939, ten years after the conspiracy started.

"And the possibilities of competition might be considered by the board of directors to be remote."

In 1945 Mr. Fuller writes to the directors of Parmelee and in his letter he refers to some certificate, and he says:

"The issuance of the certificate applied for"—which certificate, incidentally, was not granted—"would prevent any competitor or newly-organized concern from taking over the transfer business in Chicago."

1792 Mr. Samuels of Yellow was also interested because his mind had met with the minds of others in the common understanding on this point, and when an out-of-state company wrote in and requested some aid in getting established to operate in this state, he wrote back and said:

"All right, draw up an agreement, but in your agreement you must specify that your company has never been engaged in the taxicab business or in the parcel-delivery business in the State of Illinois and does not intend to engage in such business in the State of Illinois, and, particularly, will not under any circumstances engage in the taxicab business or the parcel-delivery business within the entire County of Cook," and so on.

"And if you will expressly recite in the document the type of vehicle which you are using so that we may be assured that the vehicle under no circumstances

might be converted into a vehicle for the transportation of passengers for hire or for parcel delivery,"

1793 and he goes on to say again:

"We wish, of course, to be absolutely sure and certain that you do not enter a competitive field."

Now, why is Mr. Samuels talking about parcel delivery service and keeping this out-of-state company from engaging in parcel delivery service?

Yellow and Chicago Yellow do not engage in parcel delivery service; but Parmelee does. And Yellow, without even having to confer with Parmelee, as far as the state of this record is concerned, laid down the conditions to an out-of-state company, telling that company it could not come into this state and city and engage in parcel delivery service in competition with Parmelee and it could not engage, use vehicles for the transportation of passengers for hire, which included not only the general taxicab service, but the operation.

One more word and I am closing.

In this case, your Honor, it is impossible to draw any distinction or any line between what might be considered as local, if dealt with isolated from the rest of the

1794 case, and what is clearly interstate.

It is a conspiracy affecting this whole pattern of fact. The monopoly in the first case with respect to the sale of cabs could be secured only if Parmelee entered the operating field, and the operating field, of course, is one which in the absence of this out of state and interstate control would be a local one.

The controls ran from the outside into the city of Chicago and into the city of New York and city of Pittsburgh and Minneapolis, to assure that the purposes of the conspiracy would be realized.

One point. Is this an unreasonable combination and monopoly? I submit, your Honor, that the facts of this case do show an unreasonable restraint of trade and monopoly.

Monday the Supreme Court of the United States handed down a decision in the Columbia Steel case, 16 Law Week 4515, and in that decision they referred extensively to their holding in the Yellow Cab case, which has become a leading case in its field, and in distinguishing the facts of the Columbia Steel case from the facts of the taxicab

1795 the Supreme Court made this statement, and I quote:

"Where a complaint charges such an unreasonable restraint as the facts of the Yellow Cab case show, the

amount of interstate trade affected is immaterial in determining whether a violation of the Sherman Act has been charged."

1796 *Closing Argument on Behalf of the Defendants.*

By Mr. Lynton:

Your Honor, I always have some difficulty at each succeeding argument and presentation in recognizing this case.

I have seen the Government perform some interesting gymnastics and until this morning I hardly suspected there might be introduced in this case the suggestion of vertical integration *per se* was a violation of the Sherman Act. And in connection with the suggestion of the Government that it is immaterial as to whether CCM built the best cab in the world, it seems to me difficult to find what is the basis for this charge in this case if it does not rest on the question of a vertical integration.

I say it is difficult to recognize this case, because the Supreme Court, in Mr. Justice Murphy's opinion, explicitly put this case as one in which vertical integration, by itself, would not constitute a violation of the Sherman Act.

The law in this case as laid down in that opinion was that it would be incumbent upon the Government to prove, and not merely to allege, that there was a deliberate
1797 calculated purchase of some operating companies, to compel them to buy cabs from CCM, and further that that deliberate scheme must be accompanied with unreasonableness, as a matter of industrial practice in relation to its taxicab business.

I should like in this argument to strip, if I may, this case to its barest essentials, and in doing so I necessarily omit reference to details of evidence, and I will even omit reference to statements pertaining to the testimony made by the Government which I think are not wholly accurate or wholly in accordance with the evidence.

This case, the Government says, attempts to stand on two props.

The first prop is the transfer business between railroad stations of Parmelee, and I should like first to treat with respect to that prop.

In this respect, says the Government, these defendants have agreed among themselves to preclude Yellow and Cab Sales from offering competition by way of bidding to the railroad associations for this transfer business.

1798 There is absolutely no whit of evidence in this entire case to sustain that charge. The Government predicates its charge merely upon the fact that there is some stock relationship among these corporate defendants, and thereby the Government attempts to spin out the notion that these defendants, which are not in the business of transfer between the railroad stations, should get into that business and actively attempt to bid against Parmelee for contracts or arrangements with railroad associations. It is a pure speculation. It has absolutely no basis in the facts.

When we turn to the facts, we show that the actuality demonstrates that the remark of Mr. Justice Murphy was amply justified that the proof in this case might show that such a change of business was utterly unlikely and impractical, and therefore that that charge might not be sustained.

I shall not review the evidence, but I merely mention some of the salient points.

First, there is the historical relationship between Parmelee and the railroad commencing in 1853, thus lasting nearly a century.

1799 That relationship, whatever its nature, has been sustained by the United States Supreme Court, not only in this case, but much earlier in Donovan against the Pennsylvania Company, 199 U. S. 182, and in our case, the Supreme Court cited the Donovan case as showing the validity of the Parmelee relationship.

Second, there has been no change in this situation as between Yellow, Cub Sales and Checker on the one hand, and Parmelee on the other hand either before or after the date of this alleged conspiracy.

The conspiracy, says the Government, originated in January, 1929. Yellow, the Court will recall, had been engaged in the cab operating business since 1910, and Cab Sales and its predecessors since 1919.

How the Government spins out of a development of business since 1929 a conspiracy to do that which did not exist before that time and which is utterly impractical and unlikely, is extremely difficult to imagine.

The Supreme Court said that if there is a difference in equipment, and in the general business of cab op-

1800 erating companies in Chicago and the transfer business of Parmelee, which makes it impractical to compete, there can be no violation of the Sherman Act in this case, and the evidence shows clearly that the cab operating companies in Chicago are subject to the ordinances, that

under the very terms of those ordinances, they are prohibited in their public cab business from associations or arrangements with the railroads of the type of business in which Parmelee is engaged.

They are prohibited because, among other things, they must serve anybody in Chicago and carry the passenger anywhere within Chicago that he desires.

In addition to that, the proof has shown without contradiction that there is no possible shift-over of equipment, personnel or experience between the cab operating companies and Parmelee, and therefore it is impractical and unlikely that those cab operating companies should change their business to attain the end which the Government suggests.

And finally, with respect to the Parmelee transfer
1801 business, it is of course obvious that Yellow and Cab Sales do compete with Parmelee to the extent that they may under the ordinances, that is to say they offer their cabs for service to the passengers at these railroad stations, and carry those passengers anywhere they wish to go.

With this reference, I dismiss the Parmelee transfer business from consideration in this argument, and in so dismissing it, I suggest to the Court that it is nothing other than the characterization which I originally made, it is a prop which was sought after by the Government in an effort to accomplish an aim that had no relationship to this transfer business.

I shall endeavor now to knock out the second prop, which, in a general way, is within the same category as the transfer business of Parmelee, and I refer to the 1937 ordinance.

The Government argues that the number of licenses was reduced to aid CCM's sales.

That argument, I suggested, is absurd on its face, because it amounts, in effect, to an argument, that CCM will sell more cabs if the cab operating companies reduce the number of cabs which they are permitted to operate.

1802 It is not only absurd on its face, but it is contrary to all the proof in this matter, that the 1937 ordinance had any relationship whatever to the sales of cabs.

That ordinance was adopted by the Legislature as a solution to an economic problem besetting cab operations and drivers in the City of Chicago. It had no relation whatever to the cabs sold.

The Legislature, in this ordinance, inserted a finding that the public convenience and necessity demanded that reduction.

There has been no suggestion in the proof that that finding was not proper, so far as the Legislature is concerned, and the Court will recall that when this problem came before the Supreme Court of Illinois, Mr. Justice Fulton dismissed that problem by saying it was a matter within the legislative wisdom.

Therefore, in this argument, I dismiss the 1937 ordinance with the suggestion that it was purely an operating problem determined by economic conditions in Chicago and within the wisdom of the local Legislature in
1803 Chicago to determine, and that it had no possible relationship and no actual relationship to the sales of cabs.

That prop too had a history in this case which I suggested in the opening was the essential motivation of this case.

Now, I should like to turn to what is involved in this case, the problem of the sale of cabs by CCM, and in treating of that problem, I should not like to treat that vague and confused situation without relationship to origin, chronology or date, and without assumption by the Government of a whole series of facts and characteristics which may exist in one period of time and may not exist in another period of time, and which somehow or other are interwoven, to suggest to this Court that the vertical integration which the Government alleges exists today existed from its inception.

The problem with respect to the sales of cabs is essentially a very simple one in this case. It is a problem of whether or not sometime in the early part of 1929 a deliberate and intentional scheme was formulated whose purpose it was to compel operating companies to
1804 buy cabs through a deliberate calculated purchase of their stock for control. That is the basic problem in this case. It is a problem of intent; it is a problem which the Government has posed in its pleadings, and has attempted in the course of the evidence to show existed in 1929, and traced in evolution from that time to the present time.

That very conception of the Government is contradicted in the immediate origin which it asserts by the hard concrete facts in 1929; first, it is contradicted by the fact that in 1929, at the organization of Parmelee, CCM, which the Government says, in effect, is the dominant conspirator with Mr. Markin, had no voting power whatever with respect to CCM—I should have said with respect to Parmelee.

CCM subscribed at that time to a million dollars of the preferred stock, which, as the custom was of underwriting in those days, had no voting power, and I will speculate, if the Court please, that the question of whether or not the preferred shares of Parmelee should or should not have voting power was never discussed or considered by
1805 any of the business people in this matter, and I would suggest speculatively that it just happened to be because the lawyer who drew that certificate of incorporation at that time used the form with respect to preferred shares which then had general market acceptance in early 1929.

Now, what is the significance of that?

Is it likely that this arch conspirator, CCM in 1929, in connection with underwriting which was accomplished by important banking firms, and which had, as the Government asserts, an ulterior design to compel certain operating companies which would be bought to purchase their cab requirements from CCM, to allow the organization of Parmelee in which they would have no whit of control.

Is it credible that the officers and directors of CCM at that time would have suggested to that underwriting firm that CCM did not even want shares of Parmelee, but that it wanted debentures?

Is it credible that CCM at that time would have rejected, as it did, the suggestion that having common shares, CCM in effect desired control?
1806 Thus at the inception of this conspiracy, as the Government alleges, there is absolutely no strand of control between CCM and Parmelee.

Second, at its inception in 1929, there was no control by Mr. Markin even with respect to the asserted arch conspirator, CCM.

Mr. Markin, at the time of the formation of Parmelee had twelve percent of the stock of CCM, and that percentage declined for quite a time through Mr. Markin's own personal financial difficulties when the general large stockholders of CCM were Messrs. Raskob and du Pont, and then later E. L. Cord and the Cord Corporation; and it has never been suggested, I may say parenthetically, that either the du Pont-Raskob group or the Cord Corporation were a part of this so-called conspiracy.

Of course, it could not be suggested, because the Government has placed this conspiracy in January, 1929, and the formation of Parmelee, and these gentlemen had no relationship whatever with any of the corporations or individuals involved in this suit in 1929, at the general

formation of Parmelee. Nor had Mr. Markin, this
1807 arch conspirator, any relation to Parmelee or the operating companies except in the capacity of a consultant to Mr. Miller, and the Court has had presented before it, as a matter of evidence, the reason why that happened, and that reason was very simple. It was essentially that the underwriting firms, which themselves assumed the public responsibility for the market issue to the public of Parmelee stock, wanted to have somebody with whom they had a previous relationship and previous confidence, to at least act in an advisory capacity rather than to have whole operating staffs which preexisted the underwriters' entrance into the Parmelee enterprise and with whom they had no previous acquaintance.

Thus, I suggest to your Honor that these would be very strange competitors if, having the opportunity, they declined that opportunity, and, as the facts show, had absolutely no control over these children whom the Government claims were subject to a calculated domination of a conspiratorial character.

And second, says the Government, in connection
1808 with this conspiracy, CCM wanted to obtain customers, and they formed Parmelee to obtain customers.

That suggestion of the Government is again a complete disregard of the historical evolution of all the facts, of the particular historical evolution of the Yellow Companies and of all the attendant facts during the year 1929.

The evidence has shown, and the fact is that every single operating company, with the exception of Yellow in Chicago, had, before 1929, been a customer of CCM, and the evidence has shown without contradiction that Yellow in Chicago used as its previous source of supply of a purpose built cab, Yellow Cab Manufacturing Corporation, which was a close affiliate.

The evidence has shown that that source dried before 1929 and it dried because Mr. John D. Hertz, who had the executive direction of all the Yellow Companies in Chicago, including the manufacturing corporation, determined to withdraw from that field, and in 1925, four years before this so-called conspiracy, effected the sale of the manufacturing corporation to a very small company known as General Motors Corporation.

1809 General Motors Corporation, as soon as it got that company, changed its name to Yellow Truck & Coach Company.

In 1925, there was no longer the Yellow Cab Manufacturing Company, but the Yellow Truck & Coach Company, and General Motors used that plant and equipment for the principal purpose of manufacturing trucks and buses.

Therefore the source for the purpose built cab of Yellow in Chicago, the only company that had never previously purchased CCM cabs, no longer existed.

Another event happened in 1928 which the Government chooses to ignore.

That event was the introduction by CCM of the Model K cab. It was a purpose built cab which was sensitive to the public demand of that day, and created a sensation in the New York market, and began to be a matter of desire with respect to various cab operating companies in the country.

Again looking at the situation in 1929, CCM and its Model K cab were a practical existing source of supply for
1810 operating companies. There was, at that time, no purpose built cab which approximated the public demand, and, indeed, there was no organization at that time, as shown in the evidence, which had the ability and the indicated capacity to build a purpose made cab and to continue to build them.

Now, the Court will recall, and I think even without the evidence, it may be manifest that normally cab operating companies seek replacements from the same manufacturer. They certainly would seek those replacements unless the product of that manufacturer was inferior to the products of competitor manufacturers, and as a matter of custom and usage, that replacement from the same manufacturer continues. It continues, not merely as a matter of personal equation between people in all walks of life, but it continues for the very sound business principle that it is easier to maintain the same type of equipment, and use the personnel for that maintenance as the present equipment from year to year, which has the same general set-up, and with which they have some general familiarity.
1811 Therefore, when we consider what the situation was in 1929, we do not find somebody who has an inferior product, and who is attempting somehow or another to grasp another subject to his domination in order to force that other to buy a cab.

Quite the contrary, we have in 1929 a situation where cab operating companies and the public demand approached CCM for its Model K cab.

The 1929 situation was really a very small thing. It was purchased by a newly formed company, and none of us must attribute any significance to the fact that the lawyers used a few companies rather than one.

Again, I may say parenthetically, and the Court I am sure will recall that in the early part of 1929, before the stock market crash, there was a fashion in the stock market to have holding companies rather than direct operating companies.

I have said this was a small affair, and it was. It was merely a purchase of a majority of the stock of Yellow of New York and the purchase of a minority of the stock of Yellow in Chicago. That is all it was.

1812 The subsequent purchase of cab companies in Pittsburgh had no relationship to CCM, no relationship to Mr. Markin, and as a matter of topography of Pittsburgh, Mr. Markin was opposed to that purchase.

Again, so as not to dwell upon any of the details, I should now like to shift to the year 1930, and particularly to the month of September, when the Motor Cab Transportation Corporation transaction was effected.

1813 What happened between 1929, when this design and scheme as the government charges was formed, and September, 1930, when the Motor Cab transaction occurred? Three things.

First, there was a stock market crash. As a result of that stock market crash, the public issue underwritten by the firms J. A. Sisto & Co., Hallgarton 7 Company and White, Weld & Company were not sold. That was no unusual phenomenon following October, 1929, and I suggest to the court that the government's notion that in January, 1929 any of these defendants might have anticipated a stock market crash in October, 1929 with a consequent inability of Sisto & Co. and the other underwriters to sell the securities is utterly fantastic.

Second, as a result of the stock market crash, Sisto & Co. became involved in financial difficulties. Those difficulties progressed to a point of actual liquidation of that banking firm. I suggest that it is incredible to suppose that in 1929, in the month of January, these defendants would have anticipated that banking firms whom they used for

1814 underwriting purposes would not sustain their obligations, would not market their securities and would go into liquidation.

As a result of Sisto & Co.'s liquidation it became necessary for the Parmelee debentures then unmarketed by

Sisto & Co. to the extent of $1,442,000, plus some other securities of no special significance, to be bought, and they were bought by CCM. Parmelee had no easy time in that early depression period, and the year 1930 was not a good year for it, and Parmelee's funds which it preferred to use for working capital to sustain itself during the possible duration of the depression, were thought by the man who had the single most important interest in the operations of Parmelee, namely, Mr. Ernest H. Miller, to be used not for the purpose of paying, as he termed them, fixed charges, but rather possible working capital.

We also had a third fact which comes into that matter, the acquisition by well known people and persons of great financial ability, Messrs. Raskob and duPont and certain individuals connected with them, of common shares of CCM.

1815 Their acquisition started sometime in 1930, after the crash, and it proceeded to a point where in September, 1930 that group held in excess of 130,000 common shares of CCM, as compared with less than 20,000 shares of Mr. Markin, and it was that group which, although not engaged in the operation of cabs, not even engaged in the manufacture of cabs, but which nevertheless had the single largest and most substantial financial stockholding in CCM, in effect dictated what should be done with respect to CCM.

September, 1930, one year after the stock market crash and one year of the depression, was a time which those men of finance might very well want to consider as being a basis for putting companies in which they had or might have an interest into sound financial condition. Also, that group had an eye to the future of CCM. CCM was selling cabs in abundance, and one of the big markets was New York City. In New York City the customers of CCM aggregated all sorts of persons who I will characterize as independents, indicating no relationship whatever with any of these defendants, and that group as a matter of its own selfish interest in CCM and as a matter of customer

1816 relationship with CCM, suggested that Mr. Markin, who had had a personal operation and at that time the only personal operation of taxicabs, should dispose of that so that he, a manufacturer of CCM cabs selling to customers in New York, would not be a competitor with those customers.

Mr. Markin testified at this trial that it became obvious that he would have to comply with the wishes of this large

stockholding group because in effect they could turn him out, and he did.

Result: $1,442,000 of Parmelee debentures were surrendered to that company and cancelled. The consequence of that was a reduction in funded debt. The consequence of that was, as an operating matter, the non-necessity of paying 6 per cent interest on that amount of funded debt.

The second result, the preferred shares theretofore held by CCM were surrendered to Parmelee. The result, the cumulative preferred dividend which had been paid and which Parmelee was bound to pay as a matter of its market position, was avoided, and those senior securities were exchanged for equity securities which bore nothing more than a hope in the enterprise.

1817 At the same time, as a matter of the business facts, the operations in New York city were no longer conducted by a corporation of which Mr. Markin was sole stockholder. I may say parenthetically and by way of slight digression that the government had suggested from time to time, both during the course of this trial and during the course of its argument, that one or another operating company was acquired in order to compel purchases of CCM cabs from CCM, and among those companies were DeLuxe, Chicago Cab and Motor Cab.

That, too, is an argument which, as a matter of logic, is ludicrous. It is ludicrous because Mr. Markin was the owner of the stock of each of those companies before the date of this conspiracy, or to the extent that the companies were formed immediately after January, 1929 he organized the companies. Therefore, it would be strange indeed if Mr. Markin, this arch-conspirator, who as sole stockholder could control the sale of cabs, would transfer them to another corporation in which he had no control for the purpose of compelling purchases of cabs.

1818 Let us revert back to the main trend. I suggest to the court that the 1930 transaction was motivated by business events and conditions and people, none of whom could have been imagined when Parmelee was formed.

It was in September, 1930 or a few months thereafter when the legal details of the consummation occurred, that CCM became a majority stockholder of Parmelee, and I suggest to the court that that was a matter which was suggested, implemented and insisted on by the largest stockholding group of CCM, who were no parties to this conspiracy, and I suggest to the court that the business

facts which required that were the depression, its effect upon Parmelee, its effect upon Sisto, the outstanding senior securities of Parmelee, and the attendant operating conditions in New York City.

That is this whole case, your Honor, so far as the whole problem of intent is concerned. There is nothing more to it, because after that event occurred, from that point forward we have substantially no change in the stock relationship of the corporate defendants.

1819 I would like to advert before passing from this matter to the few remaining topics, that Mr. Markin was not only out of control so far as stock holdings of CCM occurred in 1930, but Mr. Markin in September, 1930, when this transaction occurred, owned less than 5 per cent of the stock of CCM and owned—and I have the figure here—eight ten thousandths of one per cent of the stock of Parmelee, and Mr. Markin's stock interest in CCM remained low for a long period of time after that.

During the period between 1930 and 1933 the Raskob-duPont group and its extension remained the large stockholders of CCM, elected a majority of the directors of CCM, controlled even the payment of checks by requisite countersignature and for matters that have no relationship to this case in August, 1933 that interest determined not to re-elect Mr. Markin as president, and it did not, and for a period of approximately thirteen days commencing August 2, 1933 and ending August 14, 1933 Mr. Markin was not an officer of CCM.

I suggest to the court, and I want to keep to the
1820 facts in this record, that that problem with respect to Mr. Markin personally and the duPont group was a matter relating to an option which Mr. Markin had to buy some of the stock of the duPont group, and I suggest to the court further that the problem essentially was whether Mr. Markin, an insignificant stockholder, would be in a fiancial position to have some stock interest as well as his officership interest in CCM, or whether the duPont group in effect not only constituted the substantial stockholder but would impose all of its own officers and directors.

And Mr. Markin, as a matter of his own personal situation, made an arrangement with Mr. Cord of the Cord Corporation, under which the Cord Corporation loaned some money to CCM to pay a bank loan, and at the same time afforded to Mr. Markin certain personal requirements to exercise this option.

I do not want to indicate that this option was of a terrific block of stock, because it was not, but it was an option to buy a block of stock which would have increased Mr. Markin's personal stock holdings from utter insignificance to perhaps some degree of minority, and I do not recall myself, your Honor, at this moment just
1821 what the proportion was, but it was not a great proportion even as a matter of minority.

If the Cord Corporation engaged in these personal arrangements, that corporation did not say to Mr. Markin: "You are a free man."

Cord Corporation elected, out of seven directors of CCM, four, and it kept those directors in office for many years. Cord Corporation did not say to Mr. Markin: "You or the regular officers of CCM can pay even normal checks of the corporation." No indeed.

"They must be countersigned by a person who will be an officer of your corporation and who is designated by Cord Corporation." And that was the fact.

So that when we come right to the bare bones of this alleged conspiracy, you find that the arch-conspirators, CCM and Mr. Markin, had no control at the beginning and that the individual Mr. Markin continuously had no control until many years after 1933 and until after such business evolution of his did occur.

I should like to treat now, and rather briefly, of
1822 the question of restraints. Thus far I have endeavored to show that as a matter of business evolution and as a matter of normal common sense, the fanciful suggestion of the government, thinking retrospectively over a pattern of events of some twenty years, has attempted to trace something which no one prospectively could imagine.

I have said earlier and I treat now of the lack of any restraints. The government started this case when it turned to the question of sales as being based upon exclusive agreements, and as a matter of fact in the Supreme Court of the United States when the argument was made that Court as a matter of pleading accepted the government's contention that there were exclusive contracts, and the Supreme Court said:

> "If there are exclusive contracts, if there is an unreasonable restraint, if the intent existed that you allege, if Mr. Markin did control CCM in 1929, and if CCM did control Parmelee in 1929, you might have a case."

There are not any exclusive contracts. The government attempts to supply that gap by saying:

1823 "Well, if there weren't any exclusive contracts, it was not necessary to have exclusive contracts and it was not necessary to have exclusive contracts because there is a vertical integration."

There was not a vertical integration in 1929, and I shall treat of this again a little later.

If their case is nothing but a case of implication from a vertical integration, then they have no case, and the Supreme Court has so said in our matter, and it so said in the Paramount matter, and it so said in the last case referred to, involving the steel company.

The government has said that it is immaterial whether the cabs built by CCM were or were not the best cabs of the day, that it is immaterial whether or not purpose-built cabs better serve the needs of operating companies in a city like Chicago. They say, "Oh no, that doesn't make any difference; even if operating companies would as a matter of merit buy particular cabs, the mere fact that there is a supposed vertical integration precludes

1824 them from doing that which they would do if there were no integration."

Well, there is no support for that in any case anywhere, and there is no support for that in any possible method of conducting business.

Therefore, the government's suggestion that our proof relating to the merits of the purpose-built cab, our proof relating to the continuity during this entire period of CCM as the only purpose-built manufacturer, seems to me to deny the very basis upon which their assertions are made.

I do not have to even argue that the purpose-built cab was the best cab of the day, and that that cab suits best the needs of the companies in Chicago and in other large cities. The proof is uncontradicted that it does. But I don't have to argue that because no court will interfere within the area of business discretion. Therefore, the government, in order to show a restraint in this case against the background of the facts and not its own speculative notions, would really have to show that there were inferior cabs made by CCM than those produced by other

1825 manufacturers, and that these poor children in the operating companies were compelled to buy those inferior cabs—all of which is not only without support but is affirmatively contradicted by the evidence.

Another digression. I mentioned the parent and children. Let us think of that for a minute.

CCM today is a corporation whose financial assets and liabilities as an aggregate, exclusive of the value of the stock of Parmelee, is some $7,000,000--total assets, total liabilities.

Parmelee's assets exceed that. Chicago Yellow's assets exceed that. And, therefore, I suggest to your Honor that the government's argument which has gone through many inversions indeed has now come to the point that it is asserting that the tail is wagging the dog. It is asserting that these operating companies are merely appendages, that there is some kind of oulets. That is not the fact at all. Those are very substantial operating companies, and the question of earning money is of paramount im-
1826 portance to them. They are not engaged in operations with financial structures far in excess of CCM in order to help CCM out. That would be a ridiculous thing, even from CCM's point of view as a stockholder to have that.

Thus, I say that there is absolutely no proof of restraint. Even restraint by itself would not be sufficient for the government in this case. It would have to prove control coupled with the appropriate intent. It would have to prove actual and not theoretical restraint, and it would have to prove that any such restraint--and none exists--were unreasonable. It would have to consider the taxicab manufacturing industry, the taxicab operating industry, the relationship of CCM as a manufacturer within the manufacturers, the relationship of operators within the operators; it would have to consider the control by the city of Chicago through its ordinances as to what equipment could be used in Chicago; have to consider under the terms of the ordinance that the City of Chicago can prescribe the precise specifications of all equipment.

1827 And it goes without saying that the City of Chicago knows all about the equipment that has been used by Cab Sales and Checker and Yellow in this city, and it knows all about the relationships, and it knows all about their finances and their operations because, among other things, the ordinance provides for periodical inspection by the city. And there has been no suggestion by the city that these companies should not buy their cabs from CCM.

And thus I say, your Honor, that when we turn away all of the speculations, the retrospective glimpses traced by

the government as a pattern in which to attempt to accomplish something which this case is not now about, that we have left here absolutely nothing but the question of whether the existing stock structures of the corporate defendants involving an assertion by the government for a vertical integration, is illegal *per se*, and when we come to that we have no case at all because it is the clear law, and I am sure the government will not dispute it, that a vertical integration *per se*, at least today, is not a violation of the Sherman Act.

1828 I mentioned in my opening, and I advert to it simply by way of comprehensiveness on some of the salient facts, that these theoretical conceptions were not evolved out of developing business facts, but that these theoretical conceptions were evolved merely in order to somehow or other accomplish that which the Illinois Supreme Court refused to permit, namely, a change in the terms of the 1937 ordinance.

And I observed in my opening, and I mention this lastly, that these peculiar evolutions of the government, starting with one point of view and carrying forward from time to time to meet changing conditions in this case, the dismissal by the Supreme Court of what was the heart of their case, have come to conceptions which now make them the champion of large manufacturers as against the small manufacturer.

I should like, for Mr. Kaufman and myself and my associates, to express our very keen appreciation for the courtesies extended us by this court. Mr. Kaufman has asked me personally to express that sentiment, and I should like to do that not only with respect to him, but with respect to all of us.

Thank you very much.

1829 *Closing Argument on Behalf of the Government*

By Mr. Hotchkiss:

May it please the Court, I want to speak only for a very few minutes and touch particularly on this question of intent as related to the integration of the parties, and that question of intent as related to the alleged monopolization in the sale of cabs.

I think the evidence is very clear that in the early part of 1929 when this conspiracy started, CCM's interest was in insuring a continued market for the sale of its cabs, and in meeting after meeting of the board of directors of CCM

Mr. Markin called to their attention the specific advantages of their going into this plan which he, on the basis of the written evidence in this case, said was being worked out and formulated, and which involved an amalgamation of the larger operating companies.

At that time the great argument that he advanced to the members of the board of directors who had chosen him as the president, as the chief executive officer of the
1830 corporation, was that this plan would give to Checker Cab Manufacturing Company recurring orders for cabs.

We turn to Parmelee as it was organized. CCM had invested the sum of $1,000,000 at the outset in either debentures or preferred stock not carrying voting rights, and later invested another $1,400,000, if my memory serves me right, in either debentures or preferred stock which did not carry voting rights.

But the relationship between CCM and Parmelee was such that certainly as of that time there was no need for CCM to have any common stock and voting interest in Parmelee. CCM's financial investments in Parmelee, plus the relationship which existed between those two companies, was such as to insure that there was that meeting of the minds, there was that common understanding between the companies with respect to the purposes which CCM wanted to achieve, and that was to insure that as to the operating companies whose stock was acquired by Parmelee, that those companies would buy their cabs from CCM, and those companies did buy their cabs from CCM.

1831 I point out further that the corporate purpose of CCM continued unchanged without regard for what person or what group of stockholders might at any one time have a dominant position in the stock ownership of CCM.

It continued, that corporate purpose, to be expressed without regard to which group of stockholders had the dominant interest, and it has continued down to the present time.

The facts of this case show that there was a common purpose, a common understanding and a meeting of the minds of the defendants in this case with respect to the purpose of the conspiracy.

(Which was all of the evidence heard and proceedings had on the hearing of the above-entitled cause.)

1832 Reporter's Certificate to foregoing transcript omitted in printing.

1833 In the District Court of the United States for the Northen District of Illinois Eastern Division

Civil Action No. 46 C 1339

UNITED STATES OF AMERICA, PLAINTIFF,

v.

YELLOW CAB COMPANY, *et al.*, DEFENDANTS.

Description of Exhibits Tendered in Evidence by the Plaintiff Together with Excerpts from such Exhibits

[Conformed to terms of stipulation on printing excerpts from documents in Supreme Court record.]

1842 ABBREVIATIONS

The following abbreviations are sometimes hereinafter used in connection with the description of the Government's exhibits.

"Auto Sales" for Automotive Sales Corporation
"As" for Assistant Secretary
"At" for Assistant Treasurer
"Benzoline" for Benzoline Motor Fuel Co.
"Cab Sales" for Cab Sales and Parts Corporation
"Casualty" for General Transportation Casualty & Surety Co., and its predecessor General Transportation Casualty Company
"CCM" for Checker Cab Manufacturing Corporation
"Checker" for Checker Taxi Company
"Chicago Cab" for Chicago Cab Company
"Chicago Yellow" for Chicago Yellow Cab Company, Inc.
"DeLuxe" for DeLuxe Motor Cab Co.
"Federated" for Federated Enterprises, Inc.
"GTC" for General Transportation Corporation
"Maintenance" for Transportation Maintenance Corporation
"Minneapolis Yellow" for Yellow Taxi Company of Minneapolis
"Motor Cab" for Motor Cab Transportation Company
"National Transportation" for National Transportation Co., Inc.
"New York Yellow" for Yellow Taxi Corporation operating in New York

"P" for President
"Parmelee" for Parmelee Transportation Company
"Parmelee (Chicago)" for the Parmelee Company as it existed prior to the time it was dissolved and its assets taken over by Parmelee Transportation Company.
"Parmelee System" for Parmelee System, Inc. and its predecessor Parmelee Transfer and Cab Company, Inc.
"Pittsburgh Transportation" for Pittsburgh Transportation Company
"Pittsburgh Yellow" for Yellow Cab Company of Pittsburgh
"Red Cab" for Red Cab Company
"S" for Secretary
"T" for Treasurer
"TMC" for Transportation Management Corporation
"Utilities" for Utilities Motor Fuel Co., Inc.
"VP" for Vice President
"Waverly" for The Waverly Corporation
"Yellow" for Yellow Cab Company operating in Chicago

1843 *Gov't Ex. No. 1. (January 25, 1929, minutes of of directors' meeting of CCM held at 165 Broadway, New York, New York—)*

There were present Messrs. Markin, Adams, Haveron, Halff, Weiss, Polansky, Gillespie, Ludington and Moos, being a quorum.

The Chairman presented the balance sheet of this Company as of December 31, 1928, prepared by the Company's auditors, which included operations of this Company for the fiscal year 1928, and the operations of Fisk Discount Corporation and of W. P. B. Sales Co., Inc. from November 1, 1928 . . .

• • •

Mr. Markin reported that he was engaged in negotiating for the organization of a company which would effect an amalgamation between some of the more important operating companies. He also stated that the plan contemplated the organization of a management company, which would endeavor to furnish uniformity of management for such operating companies and to effect various economies in operation. He felt that in this way this Com-

pany would be in a position to receive recurring orders from substantial operating companies that would be in a position to pay cash. In order to accomplish this result, the bankers interested in the proposal would require Mr. Markin to give the benefit of his advice and some of his time to the proposed company and to the management company, and that he had also been requested to subscribe for the securities for the proposed new company.

Mr. Halff stated that he considered the proposal one which should be most beneficial to this Company, and that he personally was prepared to see Markin devote some of his time to the proposal, and that he hoped that Mr. Markin, individually, would make considerable money as a result of his efforts. After discussion, and on motion duly made and seconded, the following resolution was unanimously adopted by the vote of all the Directors present, except Mr. Markin who did not vote:

1844 RESOLVED, that this Company consents that Mr. Markin may participate in the proposal outlined by him at this meeting for the organization of a company which will acquire substantial interests in operating companies;

FURTHER RESOLVED, that this Company consents that Mr. Markin devote some of his time in helping to organize such company, and after its organization in the management of such company or of any of its subsidiary companies or operating companies;

FURTHER RESOLVED, that this Company consents that Mr. Markin may personally acquire subscription rights, stock, options or other rights with respect to securities of such proposed company.

Mr. Markin thereupon outlined a proposal whereby this Company would invest additional funds not in excess of $2,500,000 in Fisk Discount Corporation; that this plan was considered advisable so that the Company could discontinue doing business in the State of New York and could avoid the necessity of making guarantees of customers' papers in the State of New York. On motion duly made, seconded and carried, the following resolution was unanimously adopted:

RESOLVED, that the President of this Company be authorized to invest up to $2,500,000 in the acquisition of additional stock of Fisk Discount Corporation.

Gov't Ex. 2 (April 5, 1929, minutes of directors' meeting of CCM held at 165 Broadway, New New York, New York—)

There were present the following directors, constituting a quorum: Messrs. Markin, Adams, Weiss, Polansky, Ludington, Haveron, Halff, Gillespie and Rothenberger.

The meeting was held on notice duly given. Mr. Markin acted as Chairman and Mr. Haveron acted as Secretary of the meeting.

Mr. Markin stated that, pursuant to discussions which he had had with directors from time to time, he had been working on a plan whereby this Company might obtain a sustained production by insuring recurring orders from large operating companies; that for several months back he had been working with Mr. Ernest H. Miller, the President of Yellow Taxi Corporation, New York, for the
1845 organization of a company which should, in effect, be an amalgamation of that company and other large operating companies; that Sisto & Co. had indicated its willingness to finance a corporation to be known as Parmelee Transportation Company, which would acquire about 68% of the capital stock of Yellow Taxi Corporation, New York, about 26% of the capital stock of Chicago Yellow Cab Company, Inc., and over 90% of the capital stock of The Parmelee Company; that under the plan the Parmelee Transportation Company would issue $5,000,000 of 6% convertible debentures, $1,000,000 of 6% convertible preferred stock and 250,000 shares of common stock, for the purpose among other things of acquiring the stocks of the operating companies before mentioned; and the stocks of other operating companies; that under the plan, a management company controlled by the Transportation Company would enter into a management contract for the management of the operating companies; that he was to receive compensation at the rate of $25,000 a year for consulting with and advising the management company and the Transportation Company; that he and Mr. Miller were each to receive options on 25,000 shares of the common stock of the Transportation Company at $30 a share (the same price as the conversion price on the debentures and preferred stock); that it was proposed that this Company should invest $1,000,000 in cash in the purchase of $1,000,000 face amount 6% convertible preferred stock, which would constitute a security senior to the 250,000 shares of common

stock which were to be marketed by Sisto & Co. and their associates; that the bankers of the Transportation Company were insistent that he purchase a substantial block of common stock of the Transportation Company, which he was prepared to do to make the plan possible. Mr. Markin further stated that he and other large stockholders of the Company considered the advantages to this Company so substantial that they had consented to give the bankers of the Transportation Company, options on a substantial block of stock of Checker Cab Manufacturing Corporation for a period of one year at a price just above the present market. He further stated that it was proposed that a sales company affiliated with the Transportation Company would agree with this Company to endeavor to promote sales of cabs of this Company, and that the plan involved an initial order for 1,000 Checker cabs deliverable over a period of about a year at a price for cash of $1900 per cab without tires; and that there was every prospect
1846 that the Transportation Company or its sales subsidiary would procure additional substantial orders for Checker cabs; that it was proposed that such sales company should receive a commission of 5% on all orders procured by or through it for Checker cabs, such orders to be either for cash or on credit terms satisfactory to this Company, the price to be as good as Checker gives to any other purchasers for similar quantities and on like terms as to credit and specifications; such arrangement to be for a period of five years.

Mr. Markin stated that he had discussed with a majority of the directors of the Company the advisability of the investment by the Company of $1,000,000 in cash in the convertible preferred stock of the Transportation Company and, having obtained their approval, had entered into an agreement with Sisto & Co. relative to such purchase. He presented a copy of such agreement to the board for ratification.

Mr. Markin stated that he had been advised by counsel that, because members of the organization of Sisto & Co. would be directors of Parmelee Transportation Company, and possibly of some of the operating companies controlled by that corporation and of subsidiaries of that corporation, and because Sisto & Co., as well as he, himself, would be financially interested in that corporation, certain phases of the proposal and the action of the directors thereon would be subject to ratification by the stockholders. In his

opinion, however, the contemplated plan was so essentially for the benefit of this Company that there should be no difficulty in obtaining such ratification.

After discussion, and on motion duly made and seconded, the following resolutions were duly adopted:

WHEREAS, in the opinion of this Board of Directors the acquisition by Parmelee Transportation Company of a substantial interest in the stocks of Yellow Taxi Corporation, New York, of Chicago Yellow Cab Company, Inc., and of The Parmelee Company and the possible future acquisition of interests in other operating companies, will be of substantial benefit to this Company; and

WHEREAS, certain of the stockholders, directors and officers of this Company are prepared to assist in the financing of The Transportation Management Corporation; and

WHEREAS, this Board of Directors deems the invest-
1847 ment by this Company, in $1,000,000 of convertible preferred stock of The Transportation Management Company advisable;

RESOLVED, that the President of this Company be, and he hereby is, authorized to purchase for this sum of $1,000,000 and accrued dividend, $1,000,000 par value of 6% cumulative convertible preferred stock of Parmelee Transportation Company;

FURTHER RESOLVED, that the action of the President of this Company in entering into an agreement with J. A. Sisto & Co. as set forth in the letter addressed to this Company, dated March 26, copy of which has been presented to this meeting, be, and the same hereby is, in all respects approved, ratified and confirmed.

* * *

On motion duly made and seconded, the following resolution was duly adopted:

RESOLVED, that in order to put Mr. Morris Markin, the President of this Company, in a position to be of assistance to Parmelee Transportation Company, and any management company affiliated with it, this Company consents that Morris Markin may render services in an advisory capacity to either of said two corporations or any other corporations associated or affiliated with them.

FURTHER RESOLVED, that Paragraph "THIRD" of the agreement between Morris Markin and this Company, dated June 8, 1928, be amended so as to read as follows:

"Since Markin was the founder of the business and has since that time been its General Manager, and since he is recognized as being a person of unusual and unique ability in the taxicab manufacturing industry, and is thoroughly acquainted not only with the customers of the Corporation, but also with its trade methods and secrets, Markin shall devote substantially all of his time and attention to the business of the Corporation and will not directly or indirectly be interested in any company or business competing with the Corporation or its business, during the said period of three years; and that should he during said period voluntarily
1848 leave the corporation, or in any other manner violate the terms of his agreement with the corporation, he will not, during the balance of the terms thereof, become directly or indirectly interested, as officer, stockholder, executive, general manager, agent, representative, employee, partner, in an advisory capacity, or otherwise, in any company, concern, or business dealing in any manner in the business of manufacturing, buying, selling or otherwise disposing of taxicabs or other commercial vehicles, or hold himself out as having ing had any connection with Checker Cab Manufacturing Corporation or any of its subsidiaries; and in the event of any such violation, the Corporation shall be entitled to equitable relief, by injunction or otherwise, in addition to its remedies at law; provided, however, that nothing herein contained shall be deemed or construed to prevent said Markin from becoming interested, as a stockholder or otherwise, in Parmelee Transportation Company (a Delaware corporation) or The Transportation Management Corporation (a Delaware corporation) or any other corporation engaged in the operation or management of taxicabs or other motor vehicles, so long as said Markin shall continue to devote his efforts towards promoting the sales of the products of the Corporation and so long as he shall continue to devote substantially all of his time and attention to the business of the Corporation."

FURTHER RESOLVED, that the modification of the foregoing agreement shall become effective upon receipt by this Company of a letter from Mr. Markin accepting the provisions thereof; and that in all other respects the said agreement dated June 8, 1928, shall continue in full force and effect.

On motion duly made and seconded, the following resolutions were duly adopted:

RESOLVED, that the President or a Vice-President of this Company be and he hereby is authorized to make, execute and deliver an agreement with Parmelee Transportation Company, or such subsidiary sales company as may be organized by it, to pay a commission of 5% on the net sales price to such sales company for all orders or contracts for the purchase of Checker cabs procured
1849 by the Parmelee Transportation Company or its sales subsidiary, or through the efforts of either of them, such orders to be for cash or upon such terms as to credit as may be approved by the Executive Committee or Board of Directors of this Company and the price to be generally the price charged by this Company on orders for similar quantities and upon similar terms, or such other price as may be approved by the Executive Committee or Board of Directors of this Company.

FURTHER RESOLVED, that such commission of 5% be paid with respect to cabs which may be delivered under a prospective initial order for 1,000 cabs from Yellow Taxi Company, of Chicago.

Mr. Markin stated that he had recommended to those responsible for the organization of Parmelee Transportation Company that the firm of Chadbourne, Hunt, Jaeckel & Brown should act as counsel for that company and that he expected such recommendation to be accepted. He stated, however, that Mr. Jaeckel had expressed a wish that if his firm were to act in that capacity, such designation be made subject to the approval of the Board of Directors of this Company.

On motion duly made, seconded and carried, the following resolution was adopted:

RESOLVED, that this Company consent that the firm of Chadbourne, Hunt, Jaeckel & Brown may, if designated, act as counsel for Parmelee Transportation Company and/or any of its subsidiaries or affiliated companies.

Gov't Ex. No. 3. (July 17, 1929, minutes of stockholders' meeting of CCM, held in Room 309, 15 Exchange Place, Jersey City, N. J.)

Mr. Markin, President of the Corporation, called the meeting to order and presided thereat. Mr. Haveron, the Secretary of the Corporation, acted as Secretary of the meeting and kept the minutes thereof.

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The Secretary then called the roll and it was found that the following stockholders holding the number of shares of stock set opposite their respective names were present in person:

Name	*Number of Shares*
Morris Markin	22,367
F. L. Haveron	1
Henry Weiss	4,900
John J. Keenan	100

1830 The proxies were then presented to the meeting and examined, and were, thereupon, upon motion duly made and seconded, approved and ordered filed. It was found that the following stockholders, holding the number of shares set opposite their respective names, were present by Abner Goldstone and J. F. Cann as proxies:

Names	*Number of Shares*
E. Lowitz & Co.	2,495

It was also found that the following stockholders, holding the number of shares set opposite their respective names, were present by Morris Markin and F. L. Haveron (Graham Adams being absent) as proxies: [175 stockholders listed, among whom is J. A. Sisto & Co., with 77,708 shares.]

The Secretary then stated that stockholders holding 204,558 shares without nominal or par value of the capital stock of this Corporation out of 375,000 shares issued and outstanding, were present in person or represented by proxy, . . .

* * *

The Chairman then stated that one of the purposes of this annual meeting was to elect four directors to fill the vacancies caused by the expiration of the terms of the directors whose terms expire in the year 1929, the same being Jacques Moos, Jack Polansky, Mayer L. Halff and Eugene F. Gillespie. . . . The following gentlemen were thereupon nominated directors of this Corporation for the term of three years, such term to expire at the annual meeting of stockholders in the year 1932:

Jack Polansky
E. T. Gillespie
Jacques Moos
Albert F. Jaeckel

There were no further nominations for directors.

* * *

The Chairman then announced that Messrs. Jack Polansky, Jacques Moos, Eugene F. Gillespie and Albert F. Jaeckel had been elected directors of this Corporation, . . .

* * *

The Chairman pointed out to the stockholders present at the meeting that this Corporation had purchased $1,000,000 par value of 6½% Convertible Preferred Stock of Parmelee Transportation Company, a Delaware corporation which had been organized for the purpose of holding the stocks of, and managing through a subsidiary, companies operating taxicabs, such Preferred Stock being all the issued
1851 and outstanding Preferred Stock of said company.

He further stated that he deemed this purchase to be extremely advantageous in supplying a connection for marketing the products of this Corporation, and that the Board of Directors had approved this purchase. He further stated that with the knowledge and consent of the Board of Directors he individually had purchased a large block of the Common Stock of Parmelee Transportation Company and had likewise entered into a contract to render services to its managing subsidiary, The Transportation Management Corporation. He further stated that he had an option to purchase a large block of additional Common Stock of Parmelee Transportation Company and had acted as a syndicate participant in the offering of the Convertible Gold Debentures and Common Stock of said company. He also called the attention of the stockholders to the fact that Mr. F. L. Haveron was a director and the Secretary and Treasurer of Parmelee Transportation Company, and that Mr. Graham Adams, a director of this Corporation, was also a director of Parmelee Transportation Company, that Mr. Adams was also a partner in Messrs. J. A. Sisto & Co., and that Mr. Haveron and Mr. Ludington were associated with that firm, which managed and participated in the syndicate which had offered the securities of Parmelee Transportation Company and which, in November, 1928, had underwritten an offering by this Corporation of shares of stock to its stockholders.

Gov't Ex. No. 4, (April 16, 1929, minutes of first meeting of directors of Parmelee, held at office of J. A. Sisto & Co., 68 Wall Street, New York, New York—)

The first meeting of the Board of Directors of Parmelee Transportation Company, a Delaware corporation, was held at the office of J. A. Sisto & Co., No. 68 Wall Street, New York City, on the 16th day of April, 1929, . . .

The following directors were present:

Messrs. Ernest H. Miller
Graham Adams
Wm. R. Derby
F. L. Haveron
Morrell W. Gaines

being all of the members of the Board of Directors of the Company.

1852 The meeting was organized by electing Mr. Ernest H. Miller as Chairman of the Meeting and Mr. F. L. Haveron as Secretary of the Meeting.

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At this point Mr. Wm. R. Derby tendered to the Chairman of the meeting his resignation as a director of the Company effective immediately.

• • •

The Chairman then stated that it was desirable to elect a Director to fill the vacancy created by the resignation of Mr. Derby. Nominations having been called for Mr. Austin J. Bruff was nominated to fill such vacancy.

. . . the following resolution was unanimously adopted:

RESOLVED, That Mr. Austin J. Bruff be and he hereby is elected a Director of this Company to fill the vacancy created by the resignation of Mr. Wm. R. Derby . . .

• • •

Nominations having been duly made, the following persons were unanimously elected to the offices in the Company stated opposite their respective names:

Names	*Offices*
Ernest H. Miller	Chairman of the Board and President
Morrell W. Gaines	Vice-President
F. L. Haveron	Secretary
F. L. Haveron	Treasurer
A. G. Steckler	Assistant Secretary
A. G. Steckler	Assistant Treasurer

• • •

The Chairman then presented to the meeting an offer, in the form of a letter addressed to this Company under date of April 17, 1929, of J. A. Sisto & Co., to transfer to this Company certain contracts therein described for the purchase of stock of Chicago Yellow Cab Company, Inc., the Parmelee Company and Yellow Taxi Corporation, New York, (said contracts being hereinafter collectively called the purchase contracts), a copy of which is as follows:

April 17, 1929.

Parmelee Transportation Company,
7 West 10th Street,
Wilmington, Delaware.

Dear Sirs:

We have entered into the following contracts, all dated March 2nd, 1929, copies of which together with

1853 their exhibits are enclosed herewith:

(a) With Mr. Charles A. McCulloch for the purchase of (1) not less than 100,000 and not more than 120,000 shares of the stock of Chicago Yellow Cab Company, Inc., at the price of $35 per share, and (2) not less than 15,000 and not more than 20,000 shares of the stock of The Parmelee Company at the price of $100 per share.

(b) With Mr. Ernest H. Miller for the purchase of not less than 42,000 and not more than 49,000 shares of the stock of Yellow Taxi Corporation, New York, at the price of $32.50 per share.

(c) With Mr. Charles A. McCulloch for the purchase of not less than 30,000 and not more than 56,000 shares of the stock of Yellow Taxi Corporation, New York, at the price of $35 per share.

Pursuant to the terms of said contracts between Mr. Charles A. McCulloch and ourselves, Mr. McCulloch has notified us that he will deliver to us and has thereby become obligated to deliver to us upon the terms of said contracts the following shares of stock:

Name of Company	*No. of Shares*
Chicago Yellow Cab Company, Inc.	106,819
The Parmelee Company	19,300
Yellow Taxi Corporation, New York	38,000

Pursuant to the terms of said contract between Mr. Ernest H. Miller and ourselves, Mr. Miller has notified us that he will deliver to us and has thereby become obligated to deliver to us on the terms of said contract 47,659 shares of the stock of Yellow Taxi Corporation, New York.

Certified audits and financial statements, together with other statements regarding the condition of the three companies whose stocks we have agreed to purchase or find purchasers for pursuant to the above contracts are annexed to the copies of said contracts enclosed herewith.

We hereby offer to transfer to you at and for the sum of $1 all of our rights and obligations under said three contracts, you agreeing

(a) to assume all of our obligations under said contracts and to accept and pay for the shares of stock which the sellers thereunder are obligated to deliver
1854 to us thereunder as above indicated, all upon the terms and conditions of said contracts;

(b) to identify us against any liabilities or claims on the part of the sellers under said contracts or any of them; and

(c) to pay any charges or expenses which we may certify to you that we have incurred for fees of experts and counsel or otherwise in connection with the business.

We also enclose herewith a proposed draft of temporary Debenture to be dated April 1, 1929, to mature April 1, 1944, and to be issued by you under a Trust Indenture between you and Guaranty Trust Company of New York, as Trustee, dated April 1, 1929, and if you accept our offer herein contained it is understood that the Debentures which you agree to sell to us shall be in substantially the form of the enclosed draft of temporary Debenture. The form and terms of the Trust Indenture securing the Debentures shall be satisfactory to us.

In the event of your accepting our offer herein expressed and carrying out said purchase of the number of shares of stock of Chicago Yellow Cab Company, Inc., The Parmelee Company, and Yellow Taxi Corporation, New York, indicated above, we agree to purchase or cause to be purchased from you and you agree to sell to us or to purchasers found by us $500,000, principal amount, of your 6% Sinking Fund Convertible Debentures (in substantially the form of the temporary Debenture enclosed herewith) 10,000 shares of your 6% Cumulative Convertible Preferred Stock of the par value of $100 per share and 250,000 shares of your Common Stock without par value, all for the sum of $10,600,000 plus accrued interest on said Debentures and accrued dividends on said Preferred Stock to the date of delivery thereof. All of said shares are to be issued as fully paid and nonassessable. Said purchase shall include the 50 shares of your Common Stock subscribed for by the subscribers to your Certificate of Incorporation and payment therefor shall be taken as payment of the amount due on said subscription so that at the conclusion of said purchase your total stock, outstanding or subscribed for, shall be 10,000 shares of Preferred Stock and 250,000 shares of Common Stock.

We also enclose herewith a proposed draft of option agreement between yourselves and ourselves providing for the granting of options to us to purchase 100,000
1855 shares of Common Stock of your Company and it is understood that if you accept our offer herein contained you will, on or before the delivery date for your said securities, execute and deliver to us an agreement in substantially said form.

Said contracts with Messrs. McCulloch and Miller call for the delivery of stock thereunder against payment, not later than April 29, 1929; and for your Debentures, Preferred Stock and Common Stock, purchased or caused to be purchased by us hereunder, payment is to be made to you at the same time that you make payment under said contracts with Messrs. McCulloch and Miller, against the delivery by you to such person or persons as we may direct of said Debentures, the certificates for said Preferred Stock and Common Stock (such certificates being registered in such name or names and being in such denominations as we shall request in writing) and a duly executed copy of said option agreement. You are to give us one day's written notice of the time and place where payment and delivery for the Debentures, Preferred Stock and Common Stock purchased by us hereunder is to be made.

* * *

In the event you accept our offer herein expressed, our obligation to carry out this contract with you shall be subject to the approval of our counsel as to all legal proceedings taken to authorize the issue and delivery by you in accordance with the terms hereof, of said Debentures, Preferred Stock and Common Stock, and the execution and delivery by you of said Option Agreement and all other matters in the premises.

Upon receipt by us of your written acceptance of the offer herein contained, this letter shall be deemed to constitute for all purposes an assignment to you of said contracts between Mr. McCulloch and ourselves and said contract between Mr. Miller and ourselves on the terms and subject to the conditions herein expressed.

Very truly yours,

J. A. Sisto & Co.
by (Signed) J. A. Sisto
A Partner

Agreement dated the 17th day of April, 1929, between Parmelee Transportation Company, a Delaware corporation, party of the first part (hereinafter called the Company), and J. A. Sisto & Co., a copartnership of The City of New York, party of the second part (hereinafter
1856 called the Bankers).

By agreement dated April 17, 1929, between the Bankers and the Company, the Company agreed, among

other things that it would give or grant to the Bankers an option or options, to purchase 100,000 shares of common stock without par value of the company (hereinafter called common stock), upon the terms of this agreement.

NOW, THEREFORE, in consideration of the premises and in order to carry out the obligation of the Company abovementioned, the parties have agreed and hereby do agree as follows:

FIRST: The Company hereby gives and grants to the Bankers an irrevocable option to purchase at any time, or from time to time, on or before April 1, 1934, all or any part of 100,000 shares of common stock of the Company at the price of Thirty dollars ($30) per share, which price shall be subject to adjustment as hereinafter stated.

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After full discussion, on motion, duly made and seconded, the following preambles and resolutions were adopted (by the votes of all of the directors of the Company, except Mr. Adams who did not vote on this matter):

WHEREAS this Company has been organized under the laws of the State of Delaware for the purpose, among other things, of acquiring stocks of other corporations engaged in the transportation business and Chicago Yellow Cab Company, Inc., the Parmelee Company and Yellow Taxi Corporation, New York, are corporations engaged in the transportation business; . . .

WHEREAS J. A. Sisto & Co. have, by a letter addressed to this Company under date of April 17, 1929, and submitted to this meeting, offered to transfer to this Company upon certain conditions their rights under the purchase contracts therein described, to purchase 106,819 shares of the capital stock of Chicago Yellow Cab Company, Inc., a New York corporation, 19,300 shares of the capital stock of The Parmelee Company, a Delaware corporation, and 85,659 shares of the capital stock of Yellow Taxi Corporation, New York, a New York corporation, being more than 26% of the outstanding stock of Chicago Yellow Cab Company, Inc., more than 96% of the outstanding stock of The Parmelee Company and more than
68% of the outstanding stock of Yellow Taxi Cor-
1857 poration, New York, and it is in the opinion of the
Board of Directors of this Company expedient and desirable that this Company should acquire said stocks upon the terms and conditions of said offer; . . .

• • •

RESOLVED that this Company accept said offer of J. A. Sisto & Co. and acquire said purchase contracts on the terms stated in the letter of J. A. Sisto & Co. to this Company dated April 17, 1929, and submitted to this meeting;

RESOLVED that the date and place for the consummation of said purchase be left to the discretion of the President of this Company, to take place not later than April 29, 1929;

• • •

RESOLVED that for the purposes aforesaid and in accordance with the provisions of said letter this Company issue and deliver its securities required by the terms of said letter, to-wit, $5,000,000, principal amount, of 6% Sinking Fund Convertible Debentures, dated April 1, 1929, due April 1, 1944, an original issue of 10,000 shares of the par value of $100 each, of 6% Cumulative Convertible Preferred Stock and an original issue of 250,000 shares of Common Stock without par value;

• • •

RESOLVED that in accordance with the terms of said letter this Company execute and deliver to J. A. Sisto & Co. an agreement between J. A. Sisto & Co. and this Company providing, among other things, for the granting by this Company to J. A. Sisto & Co. of an option to purchase 100,000 shares of Common Stock of this Company (upon the terms and conditions to be set forth in said agreement) substantially in the form of the Option Agreement enclosed with said letter and presented to this meeting;

• • •

The Chairman then stated that certain individuals interested in the organization of this Company had caused to be organized under the laws of the State of Delaware a corporation known as The Transportation Management Corporation with an authorized capital consisting of 1000 shares of stock without par value, all of the same class and that the organization proceedings of said Corporation had been approved by counsel.

He then stated that it was proposed for the Company to subscribe to all of the authorized stock of The
1858 Transportation Management Corporation and to employ said Corporation in the management of corporations in which this Company may acquire stock, as well as other corporations, under management and other favorable

contracts, which those interested in the organization of this Company had negotiated and intend to negotiate.

Thereupon, on motion duly made and seconded, the following resolutions were unanimously adopted:

RESOLVED that this Company subscribe to all of the authorized stock of The Transportation Management Corporation, a Delaware corporation, being 1000 shares of stock without par value and all of the same class, for such sum as the President of this Company shall determine, not in excess, however, of the sum of $2000,000;

RESOLVED that the Treasurer of this Company be, and he hereby is, authorized and directed to cause to be paid out of the funds of this Company all of the expenses incurred, and disbursements made, in connection with the organization of Transportation Management Corporation.

Gov't Ex. No. 5. (April 29, 1929, minutes of directors' meeting of Parmelee held at office of J. A. Sisto & Co., 68 Wall Street, New York, New York—)

The following directors were present:

Messrs. Ernest H. Miller,
Graham Adams,
F. L. Haveron and
Morrell W. Gaines

being all of the members of the Board of Directors of the Company except Austin J. Bruff, who had advised the Chairman that he would be out of the City.

The President of the Company, Mr. Ernest H. Miller, called the meeting to order and presided thereat. The Secretary of the Company, Mr. F. L. Haveron, acted as Secretary of the meeting and kept the minutes thereof.

The Chairman stated that it was proposed for the Board of Directors to ratify the action of officers of the Company in executing in the name of the Company an Agreement dated April 29, 1929, between Ernest H. Miller, Parmelee Transportation Company and J. A. Sisto & Co. modifying agreements previously entered into between Ernest H. Miller and J. A. Sisto & Co., dated March 2, 1929 and April 16, 1929, respectively, and an agreement previously entered into between J. A. Sisto and Parmelee Transportation Company dated April 17, 1929.

1859 He thereupon presented the original of such modification agreement, a copy of which is as follows:

AGREEMENT dated April 29, 1929, between ERNEST H. MILLER of New York, N. Y. (hereinafter called Miller)

Party of the First Part, PARMELEE TRANSPORTATION COMPANY, a Delaware corporation, (hereinafter called Parmelee) Party of the Second Part and J. A. SISTO & Co., a partnership doing business in New York, N. Y. (hereinafter called Sisto) Party of the Third Part.

Under the terms of a contract dated March 2, 1929, between Miller and Sisto providing for the sale by Miller and the purchase by Sisto of certain shares of Yellow Taxi Corporation, New York (hereinafter called the New York Company), which has been assigned to Parmelee, Miller is obligated to deliver, and Parmelee to accept and pay for, 47,659 shares of stock of the New York Company.

Under the terms of a contract made between Miller and Sisto dated April 16, 1929, Miller has contracted to purchase and Sisto to sell 10,000 shares of the stock of Parmelee for the sum of $215,000 flat.

Under contract dated April 17, 1929, between Sisto and Parmelee, Sisto has assigned to Parmelee all of Sisto's rights under the above contract of March 2, 1929, with Miller, together with certain other contracts, and has agreed to purchase from Parmelee and Parmelee has agreed to sell to Sisto $5,000,000 Debentures, $1,000,000 par value preferred stock and 250,000 shares of the common stock of Parmelee and Sisto has agreed to pay to Parmelee therefor the cash sum of $10,600,000 plus accrued interest on the Debentures and plus accrued dividends on the preferred stock.

The parties desire to modify the obligations existing under the above contracts in the following respects:

First: In lieu of delivering to Parmelee the total amount of 47,659 shares of the New York Company, Miller will deliver to Parmelee only 41,044 shares; the balance of 6615 shares will be sold to Parmelee by Reycor Company, Inc., in exchange for 10,000 shares of common stock of Parmelee as per proposed contract between Reycor Company, Inc. and Parmelee attached hereto.

Second: Parmelee will pay Miller the sum of $32.50 per share for all of said 41,044 shares delivered by him and will be under no liability to make cash payment for the remaining 6615 shares, for which it in lieu of cash payment issues its 10,000 shares of common stock as above stated.

1860 Third: The contract between Sisto and Miller for the sale of 10,000 shares of common stock of the Parmelee Company is cancelled.

Fourth: Sisto's obligation under his above contract of April 17, 1929 with the Parmelee Company is modified so that in lieu of said cash sum of $10,600,000 Sisto shall be obligated to pay the Parmelee Company the sum of $10,385,000 (plus accrued interest on the debentures and plus accrued dividends on the preferred stock) and so that Sisto shall receive from Parmelee in addition to said debentures and said preferred stock 240,000 shares of its common stock instead of 250,000 shares.

Fifth: All of the shares of common stock to be delivered hereunder by Parmelee to Reycor Company, Inc. and to Sisto shall be issued as fully paid and non-assessable.

Sixth: Except as above expressly modified or cancelled all of the contracts above referred to remain unchanged and in full force and effect.

Witness the signatures of the parties hereto this 29th day of April, 1929.

(Signed) Ernest H. Miller [L.S.]
Parmelee Transportation Company
by (Signed) Morrell W. Gaines
Vice-President
J. A. Sisto & Co.
by (Signed) Graham Adams
A Partner

After discussion, on motion, duly made and seconded, the following resolution was unanimously adopted:

Resolved that the agreement dated April 29, 1929, between Ernest H. Miller, this Company and J. A. Sisto & Co. which has been presented to this meeting be and it hereby is in all respects approved, ratified and confirmed and that the action of the officers of this Company in executing said agreement be and it hereby is in all respects approved, ratified and confirmed.

1861 *Gov't Ex. No. 6. (April 26, 1929, minutes of directors' meeting of Parmelee, held at office of J. A. Sisto & Co., 68 Wall Street, New York, New York—)*

The following directors were present:
Messrs. Ernest H. Miller
Graham Adams
Austin J. Bruff
F. L. Haveron, and
Morrell W. Gaines
being all the members of the Board of Directors of the Company.

The President of the Company, Mr. Ernest H. Miller, called the meeting to order and presided thereat. The Secretary of the Company, Mr. F. L. Haveron, acted as Secretary of the Meeting and kept the minutes thereof.

* * *

The Chairman then presented to the meeting for ratification the following agreement, which had been entered into between the Company and J. A. Sisto & Co. under date of April 17, 1929, and the covenants of which on the part of the Company form a part of the consideration for the agreement of J. A. Sisto & Co. to purchase the securities of the Company as authorized at the meeting of the Board held on April 16, 1929. Said agreement is as follows:

April 17, 1929

Parmelee Transportation Company,
7 West Tenth Street,
Wilmington, Delaware

Dear Sirs:

In consideration of our agreement with your of even date, executed contemporaneously herewith, providing for the purchase by us of $5,000,000, principal amount, of your 6% Sinking Fund Convertible Debentures, 10,000 shares of your 6% Cumulative Convertible Preferred Stock and 250,000 shares of your Common Stock, this is to state for your confirmation that you have agreed with us as follows:

1. The certificates for all of the shares of stock of Chicago Yellow Cab Company, Inc., of Yellow Taxi Corporation, New York, and of The Parmelee Company, which you shall purchase pursuant to our said contract, are forthwith, upon their delivery to you, to be deposited by you with National Bank of Commerce in New York, or some other bank or trust company satisfactory to
1862 us, under an agreement whereby, during the life of your Debentures which we purchase, or for a period of ten years from the date of this letter, whichever is longer, the certificates cannot be released by such bank or trust company except on the written consent of ourselves and of White, Weld & Co. We shall not be obligated to give this consent except in our own discretion.

2. We are to be the Bankers for your Company and you will not hereafter while any of said Debentures shall remain outstanding, or for a period of ten years, whichever is longer, issue and sell or cause to be issued and

sold any stocks, bonds, notes or other securities of your Company or of any of its subsidiary corporations without offering to us the prior right to purchase the same on as favorable terms as they shall be offered to others and in each case giving us thirty days within which to accept or reject such offer.

Yours very truly,

J. A. SISTO & Co.
by (Signed) GRAHAM ADAMS

Accepted:
PARMELEE TRANSPORTATION COMPANY
by (Signed) E. H. MILLER
President

The foregoing letter having been read, the following resolutions were unanimously adopted:

RESOLVED that the execution and acceptance on behalf of this Company of the foregoing letter submitted to the Board be, and the same hereby is, confirmed, ratified and approved, and that the officers of this Company be and they hereby are authorized to do all things necessary or proper to carry the same into effect;

* * *

The Chairman then stated that officers of the Company had caused to be organized under the laws of the State of Delaware, a corporation known as Automotive Sales Corporation, with an authorized capital stock of 1,000 shares without par value, all of the same class, and that it was proposed for the Company to subscribe for all of the authorized capital stock of said Corporation.

After discussion, on motion duly made and seconded, the following resolutions were unanimously adopted:

RESOLVED that this Company subscribe to all of
1863 the authorized stock of Automotive Sales Corporation, a Delaware corporation, being 1,000 shares without par value, all of the same class, for the sum of $1,000 in cash:

RESOLVED that the Treasurer of this Company be, and he hereby is, authorized and directed to cause to be paid out of the funds of this Company all of the expenses incurred, and disbursements made, in connection with the organization of Automotive Sales Corporation.

Gov't. Ex. No. 7. (April 18, 1929, Minutes of directors' meeting of Parmelee, held at office of J. A. Sisto & Co., 68 Wall Street, New York, New York—)

The following directors were present:

Messrs. Ernest H. Miller,
Graham Adams,
Austin J. Bruff,
F. L. Haveron, and
Murrell W. Gaines;

being all of the members of the Board of Directors of the Company.

Mr. Ernest H. Miller, Chairman of the Board, called the meeting to order and presided, and Mr. F. L. Haveron, Secretary of the Company, acted as Secretary of the Meeting.

* * *

The Chairman then stated that it was proposed for the Company to authorize the execution by The Transportation Management Corporation of employment contracts with Messrs. E. H. Miller and Morris Markin, respectively. He thereupon presented to the meeting drafts of proposed contracts, copies of which are as follows:

AGREEMENT, dated the _____ day of April, 1929, between the Transportation Management Corporation, a corporation organized under the laws of the State of Delaware, (hereinafter referred to as the "Corporation"), party of the first part, and ERNEST H. MILLER, of the City of New York, party of the second part, (hereinafter referred to as "Mr. Miller"),

WITNESSETH:

The Corporation is a subsidiary of Parmelee Transportation Company, a Delaware corporation. It is
1864 about to enter into agreements with The Parmelee Company, a Delaware corporation, with Yellow Cab Company, a Maine corporation, and Yellow Taxi Corporation of New York, a New York corporation, for the management of said three companies, and expects to enter into agreements with other operating companies with reference to their management. Mr. Miller is President of Parmelee Transportation Company and of Yellow Taxi Corporation of New York. The Corporation is desirous of engaging the services of Mr. Miller as its President and General Manager for a period of two years, and Mr. Miller is prepared to act in such capacity.

NOW, THEREFORE, in consideration of the sum of One Dollar ($1) paid by the Corporation to Mr. Miller, and in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

I. The Corporation hereby employs Mr. Miller as its General Manager for a period of two years, beginning May 1, 1929, and agrees to pay Mr. Miller as compensation for all services to be rendered by him pursuant to the terms of this agreement, the sum of Fifty Thousand Dollars ($50,000) per annum during said period, payable in twelve equal monthly installments on the last day of each month.

II. Mr. Miller agrees to accept said employment and agrees during said two year period to act as General Manager of the Corporation, as General Manager of Yellow Taxi Corporation of New York, and if and when re-elected as President of said two companies or either of them, to continue to act as President of said two companies, or either of them. He further agrees to devote substantially all of his business time and his best efforts to the management of the Corporation and/or Parmelee Transportation Company and/or the companies with respect to which the Corporation shall, from time to time, have management contracts, and agrees to perform such other reasonable duties as the board of directors of the Corporation shall, from time to time, assign to him.

III. Mr. Miller agrees that during the period aforesaid he is to receive no compensation, in any capacity whatsoever (except director's fees), for any services rendered by him to Parmelee Transportation Company and/or Yellow Taxi Corporation of New York and/or from any other company or business with respect to which the Corporation shall have a management contract; it being
1865 understood that the compensation received by him from the Corporation shall be in full payment for all services rendered by him to the Corporation and/or Parmelee Transportation Company and/or their subsidiary or affiliated corporations or companies.

IV. Mr. Miller agrees that during the period aforesaid he will not engage in or be interested, directly or indirectly, in any business in competition with Parmelee Transportation Company, and/or the Corporation, and/or any company or business with respect to which the Corporation shall have a management contract, without the written consent of Parmelee Transportation Com-

pany or the Corporation, and that he will not permit his name to be used in connection with any business in competition with any of the companies aforesaid without like consent; provided, however, that nothing herein contained shall be construed to prevent Mr. Miller from being President and a director, for the time being, of Yellow Cab, Inc., of Newark, New Jersey.

V. The term of this agreement shall be for a period of two years from May 1, 1929.

* * *

AGREEMENT, dated the _____ day of April, 1929, between the Transportation Management Corporation, a corporation organized under the laws of the State of Delaware, party of the first part, (hereinafter referred to as the "Corporation"), and Morris Markin, of the City of New York, party of the second part, (hereinafter referred to as "Mr. Markin"),

WITNESSETH:

The Corporation is a subsidiary of Parmelee Transportation Company, a Delaware corporation. It is desirous of engaging the services of Mr. Markin in an advisory capacity, for a period of two years, and Mr. Markin is prepared to act in such capacity.

NOW, THEREFORE, in consideration of the sum of one dollar ($1.00) paid by the Corporation to Mr. Markin, and in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

I. The Corporation hereby engages the services of Mr. Markin in an advisory capacity in connection with its business of managing companies operating taxicabs and other motor vehicles, such employment to be for a period of two years, beginning May 1, 1929. The Corporation agrees to pay Mr. Markin as compensation for such services the sum of Twenty-five Thousand Dollars ($25,000) per annum during said period, payable
1866 in equal monthly installments on the last day of each month.

II. Mr. Markin agrees to act in an advisory capacity to the Corporation in its management of such companies operating taxicabs and other motor vehicles as it may manage during the period aforesaid; and he agrees from time to time to consult with Mr. Ernest H. Miller, President of the Corporation and of Parmelee Transportation Company, and with the other executive officers and directors of said two companies and of subsidiaries and

affiliated companies of Parmelee Transportation Company. It is understood, however, that Mr. Markin's services shall be merely those of an expert to be consulted in an advisory capacity, and that there is no obligation on his part to devote any specified or substantial portion of his time in rendering the services aforesaid.

* * *

After full discussion, upon motion duly made and seconded, the following resolutions were adopted (Mr. Miller not voting):

RESOLVED that the drafts of proposed employment contracts between The Transportation Management Corporation and Ernest H. Miller and Morris Markin, respectively, which have been submitted to this meeting be, and they hereby are, in all respects approved;

RESOLVED that this Company approves of the execution by The Transportation Management Corporation of contracts with Messrs. Ernest H. Miller and Morris Markin, respectively, in substantially the respective forms submitted to this meeting.

The Chairman then stated that it was proposed for the Company to execute option agreements with Messrs. Ernest H. Miller and Morris Markin, respectively, providing, among other things, for the granting by this Company to each of them, of an option to purchase 25,000 shares of the Common Stock of the Company at the price of $30 per share (subject to adjustment as provided in said option agreements) at any time prior to April 1, 1934, and otherwise upon the terms and subject to the conditions of said option agreements, as part of the consideration for the execution by them of the foregoing employment contracts. The Chairman thereupon submitted to the meeting drafts of proposed option agreements for use in this connection. Such drafts are as follows:

AGREEMENT dated the 29th day of April, 1929, between Parmelee Transportation Company, a Delaware cor-
1867 poration party of the first part (hereinafter called the Company), and Ernest H. Miller, of The City of New York, party of the second part (hereinafter called Mr. Miller).

As an inducement to Mr. Miller to enter into an employment agreement of even date herewith, with The Transportation Management Corporation, a Delaware corporation, and a wholly owned subsidiary of the Company, the Company is prepared to give or grant to Mr.

Miller an option or options, to purchase 25,000 shares of common stock without par value of the Company (hereinafter called common stock), upon the terms of this agreement.

NOW, THEREFORE, in consideration of the premises and in order to carry out the obligation of the Company abovementioned, the parties have agreed and hereby do agree as follows:

FIRST: The Company hereby gives and grants to Mr. Miller, an irrevocable option to purchase at any time, or from time to time, on or before April 1, 1934, subject to the provisions of Article Third hereof, all or any part of 25,000 shares of common stock of the Company at the price of Thirty Dollars ($30) per share, which price shall be subject to adjustment as hereinafter stated.

• • •

THIRD: The option herein granted shall not be exercised to any greater amount than 5,000 shares per year for the two years following May 1st, 1929, and, in the event that at any time prior to April 30th, 1931, Mr. Miller shall cease to remain in the employ of the Company, or shall die, the part of the option then unexercised shall lapse and become void. After April 30th, 1931, the restrictions set forth in this Article Third shall not apply.

• • •

AGREEMENT dated the 29th day of April, 1929, between Parmelee Transportation Company, a Delaware corporation, party of the first part (hereinafter called the Company), and Morris Markin, of The City of New York, party of the second part (hereinafter called Mr. Markin.)

As an inducement to Mr. Markin to enter into an agreement, of even date herewith, with The Transportation Management Corporation, a Delaware corporation, and a wholly owned subsidiary of the Company, whereby Mr. Markin will act in an advisory capacity in connection with the business of said The Transportation Management Corporation, the Company is prepared to give or grant to Mr. Markin an option or options, to purchase 25,000 shares of common stock without par value of the Company (hereinafter called common stock), upon the terms of this agreement.

1868

NOW, THEREFORE, in consideration of the premises and in order to carry out the obligation of the Company abovementioned, the parties have agreed and hereby do agree as follows:

FIRST: The Company hereby gives and grants to Mr. Markin an irrevocable option to purchase at any time, or from time to time, on or before April 1, 1934, subject to the provisions of Article Third hereof, all or any part of 25,000 shares of common stock of the Company at the price of Thirty Dollars ($30) per share, which price shall be subject to adjustment as hereinafter stated.

• • •

THIRD: The option herein granted shall not be exercised to any greater amount than 5,000 shares per year for the two years following May first, 1929, and, in the event that at any time prior to April 30th, 1931, Mr. Markin shall cease to render to The Transportation Management Corporation the services specified in said agreement, or shall die, the part of the option then unexercised shall lapse and become void. After April 30th, 1931, the restrictions set forth in this Article Third shall not apply.

• • •

After discussion, upon motion duly made and seconded, the following resolutions were adopted (Mr. Miller not voting):

RESOLVED that the drafts of proposed option agreements between this Company and Ernest H. Miller and Morris Markin, respectively, which have been submitted to this meeting be, and they hereby are, in all respects approved;

• • •

The Chairman then submitted to the meeting drafts of proposed contracts to be executed between The Transportation Management Corporation and Yellow Cab Company (Maine), The Parmelee Company and Yellow Taxi
1869 Corporation, New York, respectively, copies of which are as follows:

MEMORANDUM OF AGREEMENT made this 29th day of April, 1929, by and between Yellow Cab Company, a corporation organized and existing under the laws of the State of Maine, (hereinafter referred to as the "Corporation"), party of the first part, acting for itself and for each subsidiary now existing or hereafter acquired or organized of the Corporation or of Chicago Yellow Cab Company, Inc., a corporation organized and existing under the laws of the State of New York (which owns all of the capital stock of the Corporation, with the possible exception of qualifying shares), including Benzoline Motor Fuel Co., a corporation organized and existing under the laws of the State of

Illinois, (the Corporation and such subsidiaries being hereinafter referred to collectively as the "Companies"), and The Transportation Management Corporation, a corporation organized and existing under the laws of the State of Delaware (hereinafter called the "Management Corporation"), party of the second part,

WITNESSETH:

In consideration of the mutual covenants herein contained, the parties hereto agree as follows:

The Managament Corporation will furnish to the Corporation and each of the Companies, its services, from time to time, in connection with the management, operation and development of the Corporation and each of the Companies and their properties, as follows:

I. The Management Corporation will place at the service of the Companies its combined experience, advice and assistance and will aid in the solution of such problems as may arise in connection with the conduct of the business of the Companies and the operation of their properties and equipment.

II. The Management Corporation will furnish the services of its Auditing Department and its operating experts to review the accounting operations and methods of the Companies, and to recommend improved or new methods, with a view to reducing the operating cost of the Companies. The books and records of the Companies, including all books of account and statistical records, shall at all times be open to examination and inspection by the Management Corporation and its representatives.

III. The Management Corporation will manage and supervise the purchasing departments of the
1870 Companies in the purchase of supplies, materials and equipment that may be authorized. The Management Corporation shall initiate and make recommendations to the executive officers and/or directors of the Companies concerning such purchases, and none of the Companies or their officers shall enter into any agreements or give any orders for any such purchases, for amounts involving more than $500., without submitting the same in advance to, and consulting with the Management Corporation with respect thereto, and either obtaining the approval of the Management Corporation or instructions from the Board of Directors of the particular Company for which such purchase is to be made.

IV. The Management Corporation will furnish the services of its statistical experts to analyze the financial and

operating reports of the Companies and to compare the operations shown therein with those obtained by other companies, in order that any uneconomical operations may be ascertained, investigated and corrected.

V. The Management Corporation will furnish the services of its representatives in supervising the insurance necessary on the properties of the Companies.

VI. The Management Corporation will consult with and advise the executive officers of the Companies in promoting public relations and any modifications of existing fare schedules; and it will consult with and advise the executive officers and directors of the Companies concerning their finances and financial requirements.

VII. The Management Corporation will employ on behalf of the Companies, and will supervise the activities of, the departmental heads and superintendents of the Companies. It will also advise concerning the relations between the Campanies and its employees (other than executive officers) and will assist in the selection of such employees and the fixing of the rates of compensation and wages to be paid to such employees. The Management Corporation shall have power to remove and discharge any employee of the Companies other than executive officers.

VIII. The Management Corporation shall advise and assist on any special technical problems arising in connection with any of the properties and equipment of the Companies, in instructing employees in the most econom-
1871 ical method of operation, in the purchase and installation of new equipment, and shall supervise the preparation of specifications, contracts, purchase agreements, forms, certificates or other documents required in the purchase of equipment, supplies and materials.

IX. The Management Corporation shall supervise the advertising policy of the Companies; and it shall negotiate the making and renewal of leases on premises necessary or suitable to the business of the Companies. No officer or executive of any Company shall enter into any lease for the rental of premises without first consulting with the Management Corporation with respect thereto and either obtaining the approval of the Management Corporation or the approval of the directors of the Company for which such lease is to be made.

X. The Companies, and their officers, executives and employees shall at all times consult, fully cooperate and advise with the Management Corporation and its officers and

representatives concerning matters with respect to which the Managament Corporation is employed under the terms of this agreement.

XI. All contracts and orders placed by the Management Corporation, at the request of the Companies, shall be in the name of the Corporation, or of any such subsidiary, as the case may be. The Management Corporation shall be considered as acting solely as agent and is to assume no pecuniary liability under or by reason of any such obligation.

XII. The Corporation, on behalf of itself and the Companies, hereby employs the Management Corporation for each and every of the purposes for which the Management Corporation agrees to render its services under the terms of this Agreement.

XIII. As compensation for the services to be rendered by the Management Corporation to the Companies herein, the Corporation agrees to pay or cause to be paid to the Management Corporation the following sums:

(1) The sum of $50,000, per annum, payable in equal monthly installments, beginning from the date of this agreement.

(2) For each year during the term of this agreement, including the calendar year 1929, a sum equal to 10% of the consolidated net earnings of the Companies (determined as hereinafter provided) in excess of the sum of $1,600,000 and in addition thereto a sum equal to 2½% of such net earnings (determined in like manner) in excess of the sum of $2,000,000. Such net
1872 earnings (meaning thereby the surplus available for dividends on the stock of the Companies) shall be determined by the accounts of the Corporation regularly employed by it, who shall be a nationally known firm of public accountants of reputable standing, in accordance with the customary accounting practice of the Companies, except that (a) the depreciation charges of taxicabs shall, for the purpose of computing such net earnings, be taken to be 1½¢ per mile of actual operation (provided, however, that if at any future time during the term of this agreement such amount per mile shall be found to be insufficient with respect to future operations, then any increased amount shall be fixed by the Board of Directors of the Corporation and the Board of Directors of the Management Corporation) and (b) that in the event that the Corporation shall during the term of this agreement procure additional working capital through the sale of

securities, there shall be deducted as an expense of the business a sum equal to 10% of the net proceeds of such financing, beginning with the date that the Company shall have the benefit and use of such additional working capital. In case the two boards of directors cannot agree as to whether the rate of depreciation should be more than 1½ cents, the difference shall be submitted to J. A. Sisto & Co. as arbitrator, whose judgment shall be final, provided, that in the case of present existing equipment any such excess over 1½ cents shall for the purpose of this contract be charged against surplus and not against net earnings. For the purpose of computing the net earnings upon which such percentage compensation shall be based, there shall be deducted all proper reserves for taxes, including federal taxes, and depreciation, but no allowance for depreciation for any period prior to the year 1929; and no gains derived from the purchase and sale of capital assets or from investments or the purchase and sale or transfer of leaseholds shall be included as earnings, and no losses from similar sources shall be included as expenses or deductions in the computation of such percentage compensation. The fixed compensation referred to in paragraph (1) above shall be deducted as an expense for the purpose of this computation, but the percentage compensation referred to in this paragraph (2) shall not be deducted for such purpose. The amount of such percentage compensation, determined in ac-
1873 cordance with this paragraph, shall be paid to the Management Corporation as soon as the certified audit is completed and not later than March first in the year immediately following the year for which such compensation is payable.

XIV. No officer or employee of the Management Corporation shall receive any salary or compensation from any of the companies; and all salaries and expenses of the officers and employees of the Management Corporation shall be paid by it.

XV. The Management Corporation will at all times have and maintain a sufficient number of executives, employees and experts to render the services provided for by the terms of this agreement; and Ernest H. Miller, so long as he shall be the President of the Management Corporation, except in the event of his physical incapacity, and the other employees of the Management Corporation shall devote sufficient of their time in the City of Chicago, to render such services.

XVI. The term of this agreement shall be from the date hereof to December 31, 1930, inclusive.

XVII. All services to be rendered by the Management Corporation under this agreement shall be subject to the direction and control by the Board or Boards of Directors of the Corporation, and/or one or more of the Companies for which such services are to be rendered.

XVIII. This agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns, but neither this agreement nor any of its rights hereunder shall be assignable by the Management Corporation without the written consent of the Corporation first had.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their proper officers and their respective seals to be attached hereto as of the day and year first above written.

1874

YELLOW CAB COMPANY
by ~~Thos. B. Hogan~~
Vice-President

(Corporate Seal)

Attest:
~~Edward N. D'Anoona~~
Secretary

THE TRANSPORTATION MANAGEMENT CORPORATION
By ~~E. H. Miller~~
President

Attest:
~~J. F. McMahon~~
Ass't Secretary

(Corporate Seal)

The undersigned Chicago Yellow Cab Company, Inc., a corporation organized and existing under the laws of the State of New York, hereby approves and consents to the foregoing agreement.

CHICAGO YELLOW CAB COMPANY, INC.
by ~~S. H. Kesner~~
Vice-President

(Corporate Seal)

Attest:
~~Edward N. D'Anoona~~
Secretary

MEMORANDUM OF AGREEMENT made this 29th day of April, 1929, by and between The Parmelee Company, a corporation organized and existing under the laws of the State of Delaware, (hereinafter referred to as the "Corporation"), party of the first part, acting for itself and for each subsidiary now existing or hereafter acquired or organized of the Corporation (the Corporation and such subsidiaries being hereinafter referred to collectively as the "Companies"), and The Transportation Management Corporation, a corporation organized and existing under the laws of the State of Delaware (hereinafter called the "Management Corporation"), party of the second part,

1875 WITNESSETH:

In consideration of the mutual covenants herein contained, the parties hereto agree as follows:

The Management Corporation will furnish to the Corporation and each of the Companies, its services, from time to time, in connection with the management, operation and development of the Corporation and each of the Companies and their properties, as follows:

I. The Management Corporation will place at the service of the Companies its combined experience, advice and assistance and will aid in the solution of such problems as may arise in connection with the conduct of the business of the Companies and the operation of their properties and equipment.

II. The Management Corporation will furnish the services of its Auditing Department and its operating experts to review the accounting operations and methods of the Companies, and to recommend improved or new methods, with a view to reducing the operating cost of the Companies. The books and records of the Companies, including all books of account and statistical records, shall at all times be open to examination and inspection by the Management Corporation and its representatives.

III. The Management Corporation will manage and supervise the purchasing departments of the Companies in the purchase of supplies materials and equipment that may be authorized. The Management Corporation shall initiate and make recommendations to the executive officers and/or directors of the Companies concerning such purchases, and none of the Companies or their officers shall enter into any agreements or give any orders for any such purchases, for amounts involving more than $500, with-

out submitting the same in advance to, and consulting with the Management Corporation with respect thereto, and either obtaining the approval of the Management Corporation or instructions from the Board of Directors of the particular Company for which such purchase is to be made.

IV. The Management Corporation will furnish the services of its statistical experts to analyze the financial and operating reports of the Companies and to compare the operations shown therein with those obtained by other companies, in order that any uneconomical operations may be ascertained, investigated and corrected.

V. The Management Corporation will furnish the services of its representatives in supervising the in-
1876 surance necessary on the properties of the Companies.

VI. The Management Corporation will consult with and advise the executive officers of the Companies in promoting public relations and any modifications of existing fare schedules; and it will consult with and advise the executive officers and directors of the Companies concerning their finances and financial requirements.

VII. The Management Corporation will employ on behalf of the Companies, and will supervise the activities of, the departmental heads and superintendents of the Companies. It will also advise concerning the relations between the Companies and its employees (other than executive officers) and will assist in the selection of such employees and the fixing of the rates of compensation and wages to be paid to such employees. The Management Corporation shall have power to remove and discharge any employees of the Companies other than executive officers.

VIII. The Management Corporation shall advise and assist on any special technical problems arising in connection with any of the properties and equipment of the Companies, in instructing employees in the most economical method of operation, in the purchases and installation of new equipment, and shall supervise the preparation of specifications, contracts, purchase agreements, forms, certificates or other documents required in the purchase of equipment, supplies and materials.

IX. The Management Corporation shall supervise the advertising policy of the Companies; and it shall negotiate the making and renewal of leases on premises necessary or suitable to the business of the Companies. No officer or executive of any Company shall enter into any lease for

the rental of premises without first consulting with the Management Corporation with respect thereto and either obtaining the approval of the Managaement Corporation or the approval of the directors of the Company for which such lease is to be made.

X. The Companies, and their officers, executives and employees shall at all times consult, fully cooperate and advise with the Management Corporation and its officers and representatives concerning matters with respect to which the Management Corporation is employed under the terms of this agreement.

XI. All contracts and orders placed by the Management Corporation, at the request of the Companies, shall be in the name of the Corporation, or of any such subsidi-
1877 ary, as the case may be. The Management Corporation shall be considered as acting solely as agent and is to assume no pecuniary liability under or by reason of any such obligation.

XII. The Corporation, on behalf of itself and the Companies, hereby employs the Management Corporation for each and every of the purposes for which the Management Corporation agrees to render its services under the terms of this agreement.

XIII. As compensation for the services to be rendered by the Management Corporation to the Companies herein, the Corporation agrees to pay or cause to be paid to the Management Corporation the sum of $25,000 per annum, payable in equal monthly installments, beginning from the date of this agreement.

XIV. No officer or employee of the Management Corporation shall receive any salary or compensation from any of the Companies; and all salaries and expenses of the officers and employees of the Management Corporation shall be paid by it.

XV. The Management Corporation will at all times have and maintain a sufficient number of executives, employees and experts to render the services provided for by the terms of this agreement; and Ernest H. Miller, so long as he shall be the President of the Management Corporation, except in the event of his physical incapacity, and the other employees of the Management Corporation shall devote sufficient of their time in the City of Chicago, to render such services.

XVI. The term of this agreement shall be from the date hereof to December 31, 1930, inclusive.

XVII. All services to be rendered by the Management Corporation under this agreement shall be subject to the direction and control by the Board or Boards of Directors of the Corporation, and/or one or more of the Companies for which such services are to be rendered.

XVIII. This agreement shall be binding upon and inure to the benefits of the parties hereto and their successors and assigns, but neither this agreement nor any of its rights hereunder shall be assignable by the Management Corporation without the written consent of the Corporation first had.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their proper officers and their respective seals to be attached hereto as of the day 1878 and year first above written.

THE PARMELEE COMPANY

by ~~Charles A. McCulloch~~
President

Attest:
~~P. R. Growley~~
Secretary

(Corporate Seal)

THE TRANSPORTATION MANAGEMENT CORPORATION

by ~~E. H. Miller~~
President

Attest:
~~J. F. McMahon~~
Asst. Secretary

[Corporate Seal]

MEMORANDUM OF AGREEMENT made this 29th day of April, 1929, by and between Yellow Taxi Corporation, New York, a corporation organized and existing under the laws of the State of New York, (hereafter referred to as the "Corporation"), party of the first part, acting for itself and for each subsidiary now existing or hereafter acquired or organized of the Corporation (the Corporation and such subsidiaries being herinafter referred to collectively as the "Companies"), and The Transportation Management Corporation, a corporation organized and existing under the laws of the State of Delaware (hereinafter called the "Management Corporation"), party of the second part,

WITNESSETH:

The Management Corporation has been organized for the purpose, among other things, of engaging in the business of assisting in the management of motor transportation companies. It expects to receive compensation from companies to which it renders such assistance. Parmelee Transportation Company, a Delaware corporation, owns all of the capital stock of the Management Corporation. Parmelee Transportation Company expects that it or a sales company controlled by it will reserve commissions from manufacturers of cabs and other motor vehicles, including Checker Cab Manufacturing Corporation,
1879 who sell or may sell their products to the Corporation.

In consideration of the mutual covenants herein contained, the parties hereto agree as follows:

The Management Corporation will furnish to the Corporation and each of the Companies, its services, from time to time, in connection with the management, operation and development of the Corporation and each of the Companies and their properties, as follows:

I. The Management Corporation will place at the service of the Companies its combined experience, advice and assistance and will aid in the solution of such problems as may arise in connection with the conduct of the business of the Companies and the operation of their properties and equipment.

II. The Management Corporation will furnish the services of its Auditing Department and its operating experts to review the accounting operations and methods of the Companies, and to recommend improved or new methods, with a view to reducing the operating cost of the Companies. The books and records of the Companies, including all books of account and statistical records, shall at all times be open to examination and inspection by the Management Corporation and its representatives.

III. The Management Corporation will manage and supervise the purchasing departments of the Companies in the purchase of supplies, materials and equipment that may be authorized. The Management Corporation shall initiate and make recommendations to the executive officers and/or directors of the Companies concerning such purchases, and none of the Companies or their officers shall enter into any agreements or give any orders for any such

purchases, for amounts involving more than $500., without submitting the same in advance to, and consulting with the Management Corporation with respect thereto, and either obtaining the approval of the Management Corporation or instructions from the Board of Directors of the particular Company for which such purchase is to be made.

IV. The Management Corporation will furnish the services of its statistical experts to analyze the financial and operating reports of the Companies and to compare the operations shown therein with those obtained by other companies, in order that any uneconomical operations may be ascertained, investigated and corrected.

V. The Management Corporation will furnish the services of its representatives in supervising the insurance necessary on the properties of the Companies.

VI. The Management Corporation will consult 1880 with and advise the executive officers of the Companies in promoting public relations and any modifications of existing fare schedules; and it will consult with and advise the executive officers and directors of the Companies concerning its finances and financial requirements.

VII. The Management Corporation will employ on behalf of the Companies, and will supervise the activities of, the departmental heads and superintendents of the Companies. It will also advise concerning the relations between the Companies and its employees (other than executive officers) and will assist in the selection of such employees and the fixing of the rates of compensation and wages to be paid to such employees. The Management Corporation shall have power to remove and discharge any employees of the Companies other than executive officers.

VIII. The Management Corporation shall advise and assist on any special technical problems arising in connection with any of the properties and equipment of the Companies, in instructing employees in the most economical method of operation, in the purchase and installation of new equipment, and shall supervise the preparation of specifications, contracts, purchase agreements, forms, certificates or other documents required in the purchase of equipment, supplies and materials.

IX. The Management Corporation shall supervise the advertising policy of the Companies; and it shall negotiate the making and renewal of leases on premises necessary or suitable to the business of the Companies. No officer or executive of any Company shall enter into any lease for the

rental of premises without first consulting with the Management Corporation with respect thereto and either obtaining the approval of the Management Corporation or the approval of the directors of the Company for which such lease is to be made.

X. The Companies, and their officers, executives and employees shall at all times consult, fully cooperate and advise with the Management Corporation and its officers and representatives concerning matters with respect to which the Management Corporation is employed under the terms of this agreement.

XI. All contracts and orders placed by the Management Corporation, at the request of the Companies, shall be in the name of the Corporation, or of any such subsidiary, as the case may be. The Management Corporation shall be considered as acting solely as agent and is to assume no pecuniary liability under or by reason of any such obligation.

1881 XII. The Corporation, on behalf of itself and the Companies, hereby employs the Management Corporation for each and every of the purposes for which the Management Corporation agrees to render its services under the terms of this Agreement.

XIII. As compensation for the services to be rendered by the Management Corporation to the Companies herein, the Corporation agrees to pay or cause to be paid to the Management Corporation the following sums:

(1) The sum of $50,000. per annum, payable in equal monthly installments, beginning from the date of this agreement.

(2) For each year during the term of this agreement, including the calendar year 1929, a sum equal to 10% of the consolidated net earnings of the Companies (determined as hereinafter provided) in excess of the sum of $550,000, and in addition thereto a sum equal to 2½% of such net earnings (determined in like manner) in excess of the sum of $700,000. Such net earnings (meaning thereby the surplus available for dividends on the stock of the Companies) shall be determined by the accountants of the Corporation regularly employed by it, who shall be a nationally known firm of public accountants of reputable standing, in accordance with the customary accounting practice of the Companies, except that (a) the depreciation charges of taxicabs shall, for the purpose of com-

puting such net earnings, be taken to be 1½¢ per mile of actual operation (provided, however, that if at any future time during the term of this agreement such amount per mile shall be found to be insufficient with respect to future operations, then any increased amount shall be fixed by the Board of Directors of the Corporation and the Board of Directors of the Management Corporation) and (b) that in the event that the Corporation shall during the term of this agreement procure additional working capital through the sale of securities, there shall be deducted as an expense of the business a sum equal to 10% of the net proceeds of such financing, beginning with the date that the Company shall have the benefit and use of such additional working capital. In case the two boards of directors cannot
1882 agree as to whether the rate of depreciation should be more than 1½ cents, the difference shall be submitted to J. A. Sisto's & Co. as arbitrator, whose judgment shall be final, provided that in the case of present existing equipment any such excess over 1½ cents shall for the purpose of this contract be charged against surplus and not against net earnings. For the purpose of computing the net earnings upon which such percentage compensation shall be based, there shall be deducted all proper reserves for taxes, including federal taxes, and depreciation, but no allowance for depreciation for any period prior to the year 1929; and no gains derived from the purchase and sale of capital assets or from investments or the purchase and sale or transfer of leaseholds shall be included as earnings, and no losses for similar sources shall be included as expenses or deductions in the computation of such percentage compensation. The fixed compensation referred to in paragraph (1) above shall be deducted as an expense for the purpose of this computation, but the percentage compensation referred to in this paragraph (2) shall not be deducted for such purpose. The amount of such percentage compensation, determined in accordance with this paragraph, shall be paid to the Management Corporation as soon as the certified audit is completed and not later than March first in the year immediately following the year for which such compensation is payable.

XIV. No officer or employee of the Management Corporation shall receive any salary or compensation from any of the Companies; and all salaries and expenses of the

officers and employees of the Management Corporation shall be paid by it.

XV. The Management Corporation will at all times have and maintain a sufficient number of executives, employees and experts to render the services provided for by the terms of this agreement; and Ernest H. Miller, so long as he shall be the President of the Management Corporation, except in the event of his physical incapacity, and the other employees of the Management Corporation shall devote sufficient of their time in the City of New York, to render such services.

XVI. The terms of this agreement shall be from the date hereof to December 31, 1930, inclusive.

XVII. All services to be rendered by the Management Corporation under this agreement shall be subject
1883 to the direction and control of the Board or Boards of Directors of the Corporation, and/or one or more of the Companies for which such services are to be rendered.

XVIII. This agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns, but neither this agreement nor any of its rights hereunder shall be assignable by the Management Corporation without the written consent of the Corporation first had.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their proper officers and their respective seals to be attached hereto as of the day and year first above written.

YELLOW TAXI CORPORATION, NEW YORK

By ~~(Signed) Q. J. Sinnett~~
President
[Corporate Seal]

Attest:
~~(Signed) F. A. Dannemann~~
Secretary

THE TRANSPORTATION MANAGEMENT CORPORATION

By ~~(Signed) E. H. Miller~~
President
[Corporate Seal]

Attest:
~~(Signed) J. L. McMahon~~
Asst. Secretary

After full discussion, upon motion duly made and seconded, the following resolutions were unanimously adopted:

RESOLVED that the drafts of proposed management contracts between The Transportation Management Corporation and Yellow Cab Company (Maine), The Parmelee Company and Yellow Taxi Corporation, New York, respectively, which have been submitted to this meeting, be, and they hereby are, in all respects approved;

RESOLVED that this Company approves of the execution by The Transportation Management Corporation of contracts with Yellow Cab Company (Maine), The Par-
1884 melee Company and Yellow Taxi Corporation, New York, respectively, in substantially the forms of the respective drafts of contracts submitted to this meeting.

• • •

Gov't Ex. No. 8. (March 10, 1931, minutes of directors' meeting of Parmelee, held at 1775 Broadway, New York, N. Y.—)

PRESENT:

Morris Markin
E. H. Miller
Douglas Moffat
Paul C. L'Amoreaux
F. L. Haveron

being a majority of the Board of Directors and a quorum

Mr. Markin, Chairman of the Board of Directors, called the meeting to order and acted as Chairman thereof. Mr. Rank, Secretary of the Corporation being present, acted as Secretary of the meeting and kept the minutes thereof.

• • •

The Chairman then stated that in accordance with the provisions of the By-Laws of this Corporation, the annual meeting of common stockholders was to be held in Wilmington, Delaware, on April 15, 1931, . . .

• • •

The Chairman then presented to the meeting a copy of the notice and proxy to be sent to stockholders for the annual meeting, in which proxies Messrs. Miller, Rank and Charles G. Fuller were named as proxies, which were, upon motion duly made and seconded, approved and ordered filed with the Secretary of the Corporation.

• • •

The Secretary then called the attention of the meeting to the fact that the employment contracts executed by The Transportation Management Corporation, a subsidiary of this Corporation, with Messrs. Ernest H. Miller and Morris Markin would expire the 1st day of May, 1931.

After discussion and upon motion duly made and seconded, the following resolutions were unanimously adopted (Mr. Markin not voting):

RESOLVED that the Transportation Management Corporation, a wholly owned subsidiary of this Corporation, is authorized, directed and empowered to renew the employment contract between it and Mr. Morris Markin on identically the same terms as the employment con-
1885 tract now existing between it and Mr. Markin, for a further period of two (2) years from and after May 1, 1931;

* * *

After discussion and upon motion duly made and seconded, the following resolutions were unanimously adopted (Mr. Miller not voting):

RESOLVED that The Transportation Management Corporation, a wholly owned subsidiary of this Corporation, is authorized, directed and empowered to renew the employment contract between it and Mr. Ernest H. Miller on identically the same terms as the employment contract now existing between it and Mr. Miller, for a further period of two (2) years from and after May 1, 1931;

* * *

Gov't. Ex. No. 9. (May 1, 1931, agreement between the Transportation Management Corporation and Morris Markin—)

AGREEMENT dated as of the first day of May, 1931, between The Transportation Management Corporation, a corporation organized under the laws of the State of Delaware, party of the first part (hereinafter referred to as the "Corporation"), and Morris Markin, of the City of New York, party of the second part (hereinafter referred to as "Mr. Markin"),

WITNESSETH:

The Corporation is a subsidiary of Parmelee Transportation Company, a Delaware corporation. The Corporation has an existing contract terminating on April 30, 1931, with Mr. Markin, engaging the services of Mr. Markin in

an advisory capacity, and the Corporation and Mr. Markin are desirous of renewing such contract for an additional period of two years.

NOW, THEREFORE, in consideration of the sum of One Dollar ($1.00) paid by the Corporation to Mr. Markin, and in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

I. The Corporation hereby engages the services of Mr. Markin in an advisory capacity in connection with its business of managing companies operating taxicabs and other motor vehicles, such employment to be for a period of two years, beginning May 1, 1931. The Corporation agrees to pay Mr. Markin as compensation for such services the sum of Twenty-five Thousand Dollars ($25,000) per annum during said period, payable in equal monthly instal-
1886 ments on the last day of each month.

II. Mr. Markin agrees to act in an advisory capacity to the Corporation in its management of such companies operating taxicabs and other motor vehicles as it may manage during the period aforesaid; and he agrees from time to time to consult with Mr. Ernest H. Miller, President of the Corporation and of Parmelee Transportation Company, and with the other executive officers and directors of said two companies and of subsidiaries and affiliated companies of Parmelee Transportation Company. It is understood, however, that Mr. Markin's services shall be merely those of an expert to be consulted in an advisory capacity, and that there is no obligation on his part to devote any specified or substantial portion of his time in rendering the services aforesaid.

* * *

Gov't Ex. No. 10. (Agreement between Transportation Management Corporation and Morris Markin—)

AGREEMENT dated the 17th day of November, 1932, by and between The Transportation Management Corporation, a Delaware corporation (hereinafter referred to as the "Corporation"), and MORRIS MARKIN (hereinafter referred to as "Mr. Markin"),

WITNESSETH:

THAT WHEREAS the Corporation and Mr. Markin have entered into an Agreement as of the 1st day of May, 1931, providing for the employment of Mr. Markin, which the Corporation and Mr. Markin desire to amend as hereinafter set forth.

NOW, THEREFORE, in consideration of the sum of One Dollar ($1) paid by each of the parties hereto to the other, receipt whereof is hereby acknowledged, and in consideration of the mutual covenants and agreements hereinafter contained, the parties hereto agree as follows:

1. Said Agreement dated as of the 1st day of May, 1931, is hereby amended so that the term of employment of Mr. Markin is extended to 11:59 P. M. on December 31, 1935, and the compensation of Mr. Markin, beginning on January 1, 1933, shall be at the rate of $18,000 per annum, payable in equal monthly instalments on the last day of each month. For the balance of the year 1932, Mr. Markin shall continue to receive the compensation set forth in said Agreement dated as of the first day of May, 1931.

2. In all other respects, said Agreement dated as of the first day of May, 1931, is hereby ratified and
1887 confirmed and shall continue in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in several counterparts as of the day and year first above written.

THE TRANSPORTATION MANAGEMENT CORPORATION

By E. S. HIGGINS
Vice-President

Attest:
LEVIN RANK
Secretary

(Corporate Seal)

MORRIS MARKIN (L.S.)
Morris Markin

Gov't Ex. No. 11. (May 28, 1934, minutes of directors' meeting of Parmelee, held at 15 Exchange Place, Jersey City, N. J.)

Present:

Levin Rank
R. J. Wyatt
Paul L. Houston

being a majority of the Board of Directors and a quorum.

Mr. Rank, President of the Corporation, called the meeting to order and presided thereat. Mr. Wyatt, Secretary of the Corporation, acted as Secretary of the meeting and kept the minutes thereof.

• • •

Upon motion duly made and seconded, the following resolutions were unanimously adopted:

RESOLVED that this Corporation qualify as a foreign corporation to do business in the State of Illinois, and the President and the Secretary of this Corporation are authorized, directed and empowered to execute such applications, to make such payments and to take such other and further action as may be necessary or convenient for such qualification.

FURTHER RESOLVED that this Corporation consent to the dissolution of its wholly owned subsidiaries, The Parmelee Company, a Delaware corporation, and The Transportation Management Corporation, a Delaware corporation, and acquire all of the assets of said corporations, subject to their liabilities, and assume their
1888 contractual obligations, and the President and the Secretary of this Corporation be and the same hereby are authorized, directed and empowered to take all action and execute any and all consents or other papers that may be necessary or convenient to fully effectuate the intent and purposes of this resolution.

FURTHER RESOLVED that from and after the first day of June, 1934, this Corporation supply such concerns, corporations, firms, partnerships or other persons as the President may designate, with such statistical service as this Corporation may then have, at such fee as the President may approve, provided this Corporation in so doing engages solely in interstate commerce, if such statistical service shall be rendered outside the States of Illinois, New Jersey or Delaware.

Gov't. Ex. No. 14. (Plaintiff's Interrogatory No. 1—)

To Parmelee. With respect to your denial of the allegation of paragraph 3 (c) (2) of the amended complaint that Parmelee System, Inc. manages the operations of National Transportation Co., Inc., state:

1889 (a) Whether Parmelee System, Inc. managed any of the operations of National Transportation Co., Inc. at any time subsequent to January 1, 1929;

(b) If the answer to subparagraph (a) is in the affirmative, state:

(1) The date of each contract, each agreement, and each understanding to which Parmelee System, Inc. is a party and which pertains to such management;

(2) The other parties to each such contract, agreement, and understanding;

(3) The present custody of each such contract, agreement, and understanding, and of copies thereof;

(c) The name of each person, firm, or corporation with which National Transportation Co., Inc. had a contract, agreement, or understanding pertaining to the management of any of the operations of National Transportation Co., Inc. on August 29, 1947;

(d) The date of execution, and present custody, of each contract, and copies thereof, referred to in subparagraph (c) of this paragraph.

Gov't. Ex. No. 15. (Parmelee's answer to plaintiff's Interrogatory No. 1—)

(a) Parmelee System, Inc. furnished its services to National Transportation Co., Inc. in connection with the management and development of that company at times subsequent to January 1, 1929. Parmelee System, Inc. ceased all managerial services December 31, 1943.

(b) (1) and (2) Agreements, pertaining to such management, were entered into between Parmelee System, Inc. and National Transportation Co., Inc. as of November 1, 1931, January 1, 1934, January 1, 1935, January 1, 1936, July 1, 1938 and September 1, 1941. Yellow Taxi Corporation, New York, was also a party to the agreement entered into as of November 1, 1931.

(b) (3) Parmelee System, Inc. and National Transportation Co., Inc. have custody of each such agreement.

(c) National Transportation Co., Inc. had no contract, agreement, or understanding pertaining to the management of any of its operations on August 29, 1947.

(d) Not applicable.

1890 *Gov't. Ex. No. 16. (April 16, 1929, Minutes of Special Meeting of Directors of Chicago Yellow—)*

There were present:

Charles A. McCulloch	Thomas B. Hogan
Harold E. Foreman	Otto W. Lehmann
Harvey T. Woodruff	Edward N. D'Ancona
Leonard S. Florsheim	Maurice Marwick

constituting a majority and quorum of the Board of Directors of this corporation.

Mr. Charles A. McCulloch acted as Chairman of the meeting and Mr. Edward N. D'Ancona acted as Secretary thereof.

• • •

The Chairman stated that the Board of Directors of Yellow Cab Company at a meeting held March 12, 1929, adopted a resolution authorizing said Yellow Cab Company to enter into an agreeemnt with Transportation Management Corporation, a Delaware corporat on, providing for the management and supervision by said Transportation Management Corporation of certain of the activities of said Yellow Cab Company, substantial'y in the form submitted to said meeting of the Board of Directors of said Yellow Cab Company.

The Chairman then submitted to the meeting a draft of an agreement between Yellow Cab Company and Transportation Management Corporation substantially in the form submitted at said meeting of the Board of Directors of Yellow Cab Company, which draft of agreement so submitted was directed to be inserted in the minute book of this corporation immediately following the minutes of this meeting.

The Chairman stated that said Transportation Management Corporation has requested this corporation to approve and consent to said agreement.

Said agreement in the form submitted to this meeting was then fully considered by the Board of Directors, and on motion duly made and seconded and by the affirmative vote of all the directors of the corporation present at the meeting, the following resolution was unanimously adopted:

RESOLVED, that approval and consent is hereby given to the agreement, substantially in the form submitted to this meeting, between said Yellow Cab Company and Transportation Management Corporation, providing for the management and supervision by said Transportation Management Corporation of certain of the activities of said Yellow Cab Company, and the President or a Vice President and the Secretary or an Assistant Secretary of this corporation are hereby authorized, for and on
1891 behalf and in the name of this corporation and under its corporate seal, to evidence the approval and consent of this corporation to said agreement.

Gov't. Ex. No. 17 (April 29, 1929, Management Agreement Between Yellow and T. M. C.—)

[See *supra* Exhibit X, side numbers pp. 1869-1874, inclusive, for text of this agreement]

Gov't. Ex. No. 18. (April 17, 1930, Minutes of Directors Meeting of Yellow—)

Mr. Miller submitted and read to the meeting a proposed new management contract to be entered into between this corporation, as party of the first part, acting for itself and for each subsidiary now existing or hereafter acquired or organized, of this corporation and/or of Chicago Yellow Cab Company, Inc., and The Transportation Management Corporation, as party of the second part, which proposed new management contract provides that the same shall be deemed a cancellation of the memorandum of agreement dated April 29, 1929 between the parties to said new management contract as of the date thereof and that said new management contract shall represent the sole agreement between the parties thereto, said new management contract containing additional recitals and providing for increased compensation to be paid to said Transportation Management Corporation.

Said new management contract, in the form submitted and read to this meeting, was directed to be inserted in the minute book of this corporation immediately following the minutes of this meeting.

The matter was fully considered, and all the directors present deeming it to be to the best interests of this corporation to enter into said new management contract in the form submitted to this meeting, the following resolution was thereupon, on motion duly made and seconded and by the affirmative votes of all the directors of the corporation present at this meeting, unanimously adopted:

RESOLVED, that a contract providing for the management and supervision by Transportation Management Corporation of certain of the activities of this corporation (which contract is to supersede the contract dated April 29, 1929 between this corporation and Transportation Management Corporation) substantially in the form submitted to this meeting, be entered into between this corporation and Transportation Management Corporation, . . .

Mr. Miller reported that with respect to the seven hundred (700) taxicabs, the purchase of which was authorized by the Board of Directors at the meeting thereof
1892 held January 16, 1930, four hundred fifty (450) of said taxicabs had been delivered to this corporation, of which two hundred (200) cabs had been paid for and the balance of two hundred fifty (250) cabs would be paid for on or before May 10, 1930.

Gov't. Ex. No. 19. (May 8, 1930, Management Agreement between Yellow and T. M. C.—)

MEMORANDUM OF AGREEMENT made this 8th day of May, 1930, by and between Yellow Cab Company, a corporation organized and existing under the laws of the State of Maine, (hereinafter referred to as the "Corporation"), party of the first part, acting for itself and for each subsidiary now existing or hereafter acquired or organized of the Corporation or of Chicago Yellow Cab Company, Inc., a corporation organized and existing under the laws of the State of New York (which owns all of the capital stock of the Corporation, with the possible exception of qualifying shares), including, Benzoline Motor Fuel Co., a corporation organized and existing under the laws of the State of Illinois, (the Corporation and such subsidiaries being hereinafter referred to collectively as the "Companies"), and The Transportation Management Corporation, a corporation organized and existing under the laws of the State of Delaware (hereinafter called the "Management Corporation"), party of the second part,

• • •

The Management Corporation has been organized for the purpose, among other things, of engaging in the business of assisting in the management of motor transportation companies. It expects to receive compensation from companies to which it renders such assistance. Parmelee Transportation Company, a Delaware corporation, owns all of the capital stock of the Management Corporation. Parmelee Transportation Company expects that it, or a sales company controlled by it will receive commissions from manufacturers of cabs and other motor vehicles, including Checker Cab Manufacturing Corporation, who sells or may sell their products to the Corporation.

In consideration of the mutual covenants herein contained, the parties hereto agree as follows:

The Management Corporation will furnish to the Corporation and each of the Companies, its services, from time to time, in connection with the management, operation and development of the Corporation and each of the companies and their properties, as follows:

• • •

III. The Management Corporation will manage and supervise the purchasing departments of the Companies in the purchase of supplies, materials and equipment

1893 that may be authorized. The Management Corporation shall initiate and make recommendations to the executive officers and/or directors of the Companies concerning such purchases, and none of the Companies or their officers shall enter into any agreements or give any orders for any such purchases, for amounts involving more than $500., without submitting the same in advance to, and consulting with the Management Corporation with respect thereto, and either obtaining the approval of the Management Corporation or instructions from the Board of Directors of the particular Company for which such purchase is to be made.

IV. The Management Corporation will furnish the services of its statistical experts to analyze the financial and operating reports of the Companies and to compare the operations shown therein with those obtained by other companies, in order that any uneconomical operations may be ascertained, investigated and corrected.

V. The Management Corporation will furnish the services of its representatives in supervising the insurance necessary on the properties of the Companies.

VI. The Management Corporation will consult with and advise the executive officers of the Company in promoting public relations and any modifications of existing fare schedules; and it will consult with and advise the executive officers and directors of the company concerning its finances and financial requirements.

VII. The Management Corporation will employ on behalf of the Companies, and will supervise the activities of, the departmental heads and superintendents of the Companies. It will also advise concerning the relations between the Companies and its employees (other than executive officers) and will assist in the selection of such employees and the fixing of the rates of compensation and wages to be paid to such employees. The Management Corporation shall have power to remove and discharge any employees of the Companies other than executive officers.

VIII. The Management Corporation shall advise and assist on any special technical problems arising in connection with any of the properties and equipment of Companies, in instructing employees in the most economical method of operation, in the purchase and installation of new equipment, and shall supervise the preparation of specifications, contracts, purchase agreements, forms, certificates or other documents required in the purchase of equipment, supplies and materials.

IX. The Management Corporation shall supervise the advertising policy of the Companies; and it shall negotiate the making and renewal of leases on premises necessary or suitable to the business of the Companies. No officer
1894 or executive of any Company shall enter into any lease for the rental of premises without first consulting with the Management Corporation with respect thereto and either obtaining the approval of the Management Corporation or the approval of the directors of the Company for which such lease is to be made.

X. The Companies, and their officers, executives and employees shall at all times consult, fully cooperate and advise with the Management Corporation and its officers and representatives concerning matters with respect to which the Management Corporation is employed under the terms of this agreement.

XI. All contracts and orders placed by the Management Corporation, at the request of the Companies, shall be in the name of the Corporation, or of any such subsidiary, as the case may be. The Management Corporation shall be considered as acting solely as agent and is to assume no pecuniary liability under or by reason of any such obligation.

XII. The Corporation, on behalf of itself and the Companies, hereby employs the Management Corporation for each and every of the purposes for which the Management Corporation agrees to render its services under the terms of this agreement.

XIII. As compensation for the services to be rendered by the Management Corporation to the Companies herein, the Corporation agrees to pay or cause to be paid to the Management Corporation the following sums:

(1) The sum of Fifty thousand dollars ($50,000) per annum, payable in equal monthly installments beginning from the date of this agreement until December 31, 1930, and the sum of Seventy-five thousand dollars ($75,000) per annum, payable in equal monthly installments from January 1, 1931, to December 31, 1931.

(2) For each year during the term of this agreement, including the calendar year 1930, a sum equal to 10% of the consolidated net earnings of the Companies (determined as hereinafter provided) in excess of the sum of $1,600,000, and in addition thereto a sum equal to 2½% of such net earnings (determined in like manner) in excess of the sum of $2,000,000. . . .

• • •

XV. The Management Corporation will at all times have and maintain a sufficient number of executives, employees and experts to render the services provided for by the terms of this agreement; and Ernest H. Miller, so long as he shall be the President of the Management Corporation, except in the event of his physical incapacity, and the other employees of the Management Corporation, shall devote sufficient of their time in the City of Chicago, to render such services.

1895 XVI. The term of this agreement shall be from the date hereof to December 31, 1931, inclusive.

XVII. All services to be rendered by the Management Corporation under this agreement shall be subject to the direction and control by the Board or Boards of Directors of the Company, and/or one or more of the Companies for which such services are to be rendered.

• • •

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their proper officers and their respective seals to be attached hereto as of the day and year first above written.

YELLOW CAB COMPANY

By A. W. MOORE
President
(Corporate Seal)

Attest:
BENJAMIN SAMUELS
Asst. Secretary

THE TRANSPORTATION MANAGEMENT CORPORATION,

By E. H. MILLER
President
(Corporate Seal)

Attest:
A. G. STECKLER
Secretary

The undersigned, Chicago Yellow Cab Company, Inc., a corporation organized and existing under the laws of the State of New York, hereby approves and consents to the foregoing agreement.

CHICAGO YELLOW CAB COMPANY, INC.,

By A. W. MOORE
President
(Corporate Seal)

Attest:
BENJAMIN SAMUELS
Asst. Secretary

Gov't. Ex. No. 20. (May 15, 1930, Minutes of Directors Meeting of Yellow—)

There were present: Thomas B. Hogan
S. H. Kesner Arthur W. Moore
Ernest H. Miller Martin Lindsay
constituing a majority and quorum of the Directors of the corporation.

The President, Mr. Arthur W. Moore, acted as Chairman of the meeting, and in the absence of the Secretary, Mr. S. H. Kesner, the Assistant Secretary of the corporation, acted as Secretary of the meeting.

• • •

1896 The Chairman reported that the new management contract which had been submitted to the Board of Directors at the meeting held April 17, 1930, had been duly executed under date of May 8, 1930, and on motion duly made and seconded, and by the affirmative vote of all the directors of the corporation present at this meeting, the execution of said new management contract was ratified, approved and confirmed.

The President reported that of the seven hundred (700) cabs, the purchase of which had been authorized by the Board of Directors of this corporation at the meeting held January 16, 1930, twenty (20) cabs had been delivered since the last meeting of this Board of Directors, and that there were still two hundred thirty (230) cabs still to be delivered, of said seven hundred (700) cabs.

Gov't Ex. No. 21. (January 1, 1932, Management Contract Between Yellow and T.M.C.—)

MEMORANDUM OF AGREEMENT dated as of the 1st day of January, 1932, by and between Yellow Cab Company, a corporation organized and existing under the laws of the State of Maine, (hereinafter referred to as the "Corporation"), party of the first part, acting for itself and for each subsidiary now existing or hereafter acquired or organized of the Corporation or of Chicago Yellow Cab Company, Inc., a corporation organized and existing under the laws of the State of New York (which owns all of the capital stock of the Corporation, with the possible exception of qualifying shares), including Benzoline Motor Fuel Co., a corporation organized and existing under the

laws of the State of Illinois, (the Corporation and such subsidiaries being hereinafter referred to collectively as the "Companies"), and The Transportation Management Corporation, a corporation organized and existing under the laws of the State of Delaware, (hereinafter called the "Management Corporation"), party of the second part,

* * *

The Management Corporation has been organized for the purpose, among other things, of engaging in the business of assisting in the management of motor transportation companies. It expects to receive compensation from companies to which it renders such assistance. Parmelee Transportation Company, a Delaware corporation, owns all of the capital stock of the Management Corporation. Parmelee Transportation Company expects that it, or a sales company controlled by it will receive commissions from manufacturers of cabs and other motor vehicles, including Checker Cab Manufacturing Corporation, who sell or may sell their products to the Corporation.

1897 In consideration of the mutual covenants herein contained, the parties hereto agree as follows:

I. The Management Corporation will furnish to the Corporation and each of the Companies, its services, from time to time, in connection with the management, operation and development of the Corporation and each of the Companies and their respective properties, as follows:

(a) The Management Corporation will place at the service of the Companies its combined experience, advice and assistance and will aid in the solution of such problems as may arise in connection with the conduct of the business of the Companies and the operation of their respective properties and equipment.

(b) The Management Corporation will furnish the services of its Auditing Department and its operating experts to review the accounting operations and methods of the Companies, and to recommend improved or new methods, with a view to reducing the operating cost of the Companies. The books and records of the Companies, including all books of account and statistical records, shall at all times be open to examination and inspection by the Management Corporation and its representatives.

(c) The Management Corporation will manage and supervise the purchasing departments of the Companies in the purchase of supplies, materials and equipment that may be authorized by the respective Boards of Directors

of the Companies. The Management Corporation shall initiate and make recommendations to the executive officers and/or directors of the Companies concerning such purchases, and none of the Companies or their officers shall enter into any agreements or give any orders for any such purchases for amounts involving more than $500. without submitting the same in advance to and consulting with the Management Corporation with respect thereto, and obtaining the approval of the Management Corporation and authorization from the Board of Directors of the particular Company for which such purchase is to be made in connection therewith.

(d) The Management Corporation will furnish the services of its statistical experts to analyze the respective financial and operating reports of the Companies and to compare the operations showns therein with those obtained by other companies, in order that any uneconomical operations may be ascertained, investigated and corrected.

(e) The Management Corporation will furnish the services of its representatives in supervising the insurance necessary on the respective properties of the Companies.

(f) The Management Corporation will consult with
1898 and advise the respective executive officers and/or Boards of Directors of the Companies in the promotion of public relations and any modifications of existing fare schedules; and it will consult with and advise the respective executive officers and/or Boards of Directors of the Companies concerning finances and financial requirements.

(g) The Management Corporation, subject to the respective Boards of Directors of the Companies, will employ on their behalf and will supervise the activities of their departmental heads and superintendents. It will also advise concerning the relations between the Companies and their employees (other than executive officers) and, subject to the respective Boards of Directors of the Companies, will assist in the selection and/or removal of such employees and the fixing of the rates of compensation and wages to be paid to such employees.

(h) The Management Corporation shall advise and assist on any special technical problems arising in connection with any of the properties and equipment of the Companies, in instructing employees in the most econom-

ical method of operation, and in the purchase and installation of new equipment, and shall supervise the preparation of specifications, contracts, purchase agreements, forms, certificates or other documents required in the purchase of equipment, supplies and materials.

(i) The Management Corporation shall supervise the advertising policy of the Companies; and it shall negotiate for their account the making and renewal of leases on premises necessary or suitable to the business of the Companies. No officer or executive of any Company shall enter into any lease for the rental of premises without first consulting with the Management Corporation with respect thereto and obtaining the approval of the Management Corporation and the approval of the Board of Directors of the Company for which such lease is to be made in connection therewith.

• • •

V. As compensation for the services to be rendered by the Management Corporation to the Companies herein, the Corporation agrees to pay or cause to be paid to the Management Corporation the following sums:

(1) The sum of Seventy-five Thousand dollars ($75,000.) per annum, payable in equal monthly installments beginning from the date of this agreement until December 31, 1932.

(2) A sum equal to 10% of the consolidated net earnings of the Companies (determined as hereinafter provided) in excess of the sum of $1,600,000. and in addition thereto a sum equal to 2½% of such net earnings (determined in like manner) in excess of the sum of $2,000,000. for the year 1932. . . .

• • •

1899 VII. The Management Corporation will at all times have and maintain a sufficient number of executives, employees and experts to render the services provided for by the terms of this agreement: and Ernest H. Miller, so long as he shall be the President of the Management Corporation, except in the event of his physical incapacity, and the other employees of the Management Corporation, shall devote sufficient of their time in the City of Chicago, to render such services.

• • •

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their proper officers and their respective seals to be attached hereto as of the day and year first above written.

YELLOW CAB COMPANY
By s/ A. W. MOORE
President
(CORPORATE SEAL)

Attest:
s/E. J. KENNEDY
Asst. Secretary.

THE TRANSPORTATION MANAGEMENT CORPORATION
By s/ E. K. MILLER
President.
(CORPORATE SEAL)

Attest:
s/ R. J. WYATT
Secretary.

The undersigned, Chicago Yellow Cab Company, Inc., a corporation organized and existing under the laws of the State of New York, hereby approves and consents to the foregoing agreement.

CHICAGO YELLOW CAB COMPANY, INC.
By s/ A. W. MOORE
President
(CORPORATE SEAL)

Attest:
s/E. J. KENNEDY
Asst. Secretary.

Gov't Ex. No. 22. (November 17, 1932, Management Agreement Between Yellow and T.M.C.—)

MEMORANDUM OF AGREEMENT dated the 17th day of November, 1932, by and between Yellow Cab Company, a corporation duly organized and legally existing under the laws of the State of Maine (hereinafter referred to as the "Corporation"), party of the first part, acting for itself and for each subsidiary now existing or hereafter acquired or organized of the Corporation or of Chicago Yellow Cab Company, Inc., a corporation duly organized and legally existing under the laws of the State of New York (which owns all or substantially all of the capital stock of the Corporation), including Benzoline Motor

1900

Fuel Co., a corporation duly organized and legally existing under the laws of the State of Illinois (the Corporation and such subsidiaries and affiliated companies being hereinafter referred collectively as the "Companies"), and The Transportation Management Corporation, a corporation duly organized and legally existing under the laws of the State of Delaware (hereinafter called the "Management Corporation"), party of the second part,

WITNESSETH:

A. The Management Corporation is engaged in the business of assisting in the management and supervising the operations of motor transportation companies, and receives compensation from companies to which it renders such assistance. The Corporation is engaged in the business of operating taxicabs for hire in the City of Chicago, County of Cook, State of Illinois, and desires to continue to avail itself of the management and supervisory services of the Management Corporation and/or of its executives for the term of this Agreement as hereinafter set forth.

B. The Management Corporation entered into an Agreement with the Corporation, under date of January 1, 1932, whereunder it is provided, among other things, that the Management Corporation will assist in the management of the Corporation in consideration of a fixed management fee, and in addition a percentage of its net profits. The Management Corporation is ready to waive any participation in said percentage of the net profits of the Corporation, which are recognized to be substantial, in consideration of the execution of this Agreement by the Corporation and the performance by it of its covenants and agreements hereinafter set forth.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants hereinafter contained the parties hereto agree as follows:

I. The Management Corporation agrees to furnish its services, for a period of three years, beginning on January 1, 1933 and ending at 11:59 P. M. on December 31, 1935, to the Corporation and to each of the Companies, from time to time, in connection with the management, operation and development of the Corporation and each of the companies and their respective properties, as follows:

(a) The Management Corporation will place at the service of the Companies its combined experience, advice and assistance and will aid in the solution of such problems as may arise in connection with the conduct of the business of

the Companies and the operation of their respective properties and equipment;

(b) The Management Corporation will furnish the 1901 services of its Auditing Department and its operating experts to review the accounting operations and methods of the Companies, and to recommend improved or new methods, with a view to reducing the operating cost of the Companies. The books and records of the Companies, including all books of account and statistical records, shall at all times be open to examination and inspection by the Management Corporation and its representatives.

(c) The Management Corporation will manage and supervise the purchasing departments of the Companies in the purchase of supplies, materials and equipment that may be authorized by the respective Boards of Directors of the Companies. The Management Corporation shall initiate and make recommendations to the executive officers and/or directors of the Companies concerning such purchases, and none of the Companies or their officers shall enter into any agreements or give any orders for any such purchases for amounts involving more than $500 without submitting the same in advance to and consulting with the Management Corporation with respect thereto, and obtaining the approval of the Management Corporation and authorization from the Board of Directors of the particular company for which such purchase is to be made in connection therewith.

(d) The Management Corporation will furnish the services of its statistical experts to analyze the respective financial and operating reports of the Companies and to compare the operations shown therein with those obtained by other companies, in order that any uneconomical operations may be ascertained, investigated and corrected.

(e) The Management Corporation will furnish the services of its representatives in supervising the insurance necessary on the respective properties of the Companies.

(f) The Management Corporation will consult with and advise the respective executive officers and/or Board of Directors of the Companies in the promotion of public relations and any modifications of existing fare schedules; and it will consult with and advise the respective executive officers and/or Boards of Directors of the Companies concerning finances and financial requirements.

(g) The Management Corporation, subject to the respective Boards of Directors of the Companies, will employ on their behalf and will supervise the activities of their depart-

mental heads and superintendents. It will also advise concerning the relations between the Companies and their employees (other than executive officers) and subject to the respective Boards of Directors of the Companies, will assist in the selection and/or removal of such employees and the fixing of the rates of compensation and wages to be paid to such employees.

(h) The Management Corporation shall advise
1902 and assist on any special technical problems arising in connection with any of the properties and equipment of the Companies, in instructing employees in the most economical method of operation, and in the purchase and installation of new equipment, and shall supervise the preparation of specifications, contracts, purchase agreements, forms, certificates or other documents required in the purchase of equipment, supplies and materials.

(i) The Management Corporation shall supervise the advertising policy of the Companies; and it shall negotiate for their account the making and renewal of leases on premises necessary or suitable to the business of the Companies. No officer or executive of any Company shall enter into any lease for the rental of premises without first consulting with the Management Corporation with respect thereto and obtaining the approval of the Management Corporation and the approval of the Board of Directors of the Company for which such lease is to be made in connection therewith.

II. The Companies, and their respective officers, executives and employees shall at all times consult, fully cooperate and advise with the Management Corporation and its officers and representatives concerning matters with respect to which the Management Corporation is employed under the terms of this Agreement.

III. All contracts and orders placed by the Management Corporation, at the request of the Companies, shall be in the name of the Corporation, or of any such Company, as the case may be. The Management Corporation shall be considered as acting solely as agent and advisor of the Companies and shall assume no pecuniary liability under or by reason of any such obligation, and in no event shall the Management Corporation operate, or conduct the actual operations of, the taxicabs or equipment of the Companies, which shall at all times be subject to the control of their respective Boards of Directors.

IV. The Corporation, on behalf of itself and the Companies, hereby employs the Management Corporation for

each and every of the purposes for which the Management Corporation agrees to render its services under the terms of this Agreement.

V. As compensation for the services rendered by the Management Corporation to the Corporation and to the Companies as herein provided, the Corporation agrees to pay or cause to be paid to the Management Corporation the sum of $50,000 per annum, payable in equal monthly instalments in advance, beginning January 1, 1933, until December 31, 1935.

VI. No officer or employee of the Management Corporation shall receive any salary or compensation from any of the Companies; and all salaries and expenses of the officers and employees of the Management Corporation shall be paid by it.

1903 VII. All services to be rendered by the Management Corporation under this Agreement shall be subject to the direction and control by the Board or Boards of Directors of the Corporation and/or one or more of the Companies for which such services are to be rendered, respectively.

VIII. The Management Corporation agrees that during the term of this Agreement it will employ Ernest H. Miller, and will continue to employ its two principal managers who have or who are about to execute contracts of employment with it, as executives, so long as they are able to so act, respectively, for the purpose of rendering such advice and consultation as may be reasonably necessary to assist the Management Corporation adequately to perform the management services agreed to be performed by it to the Corporation and/or the Companies hereunder. In the event that, prior to the expiration of the term herein set forth, the Management Corporation shall for any reason be unable or unwilling to perform this Agreement (whether by reason of insolvency or bankruptcy, or for any other reason), or this Agreement shall for any reason be terminated, said Ernest H. Miller and said two managers (or those of them who are not then deceased or permanently disabled) shall have the right and option, if they so desire, either directly or through a corporation to be organized, managed and operated by them (or by those of them who are not then deceased or permanently disabled), to assume and perform for the balance of the term hereof the management services agreed to be performed by the Management Corporation hereunder, and shall be entitled therefor to the

compensation herein named. In any such event such persons, if they desire to exercise said option, shall send written notice to that effect to the Corporation within ten days after the happening of such event and thereupon the Corporation agrees to enter into a management contract in substantially the form of this Agrement for the balance of the term hereof with such persons (or with those of them who are not then deceased or permanently disabled) or such corporation to be so organized, managed and operated. The Corporation, in order to preserve the continuity of the management services provided for herein, hereby gives and grants to said Ernest H. Miller and said two managers (or to those of them who are not then deceased or permanently disabled) such right and option in consideration of the execution by each of them of an appropriate contract of employment or of an appropriate amendment to any existing contract of employment with the Management Corporation, obligating each of them, respectively, to act as an executive of it as aforesaid, the execution of which contracts and/or amendments the Corporation deeming of great benefit to it.

* * *

1904 IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed by their proper officers thereunto duly authorized and their respective seals to be hereunto attached as of the day and year first above written.

YELLOW CAB COMPANY

By s/ THOS. B. HOGAN
President
(CORPORATE SEAL)

Attest:
s/ R. H. BIEZE
Secretary

THE TRANSPORTATION MANAGEMENT CORPORATION

By s/ P. S. HIGGINS
Vice-President
(CORPORATE SEAL)

Attest:
s/ LEVIN RANK
Secretary

The undersigned, Chicago Yellow Cab Company, Inc., a corporation duly organized and legally existing under the laws of the State of New York, hereby approves the terms

and provisions of the foregoing Agreement and consents to the execution thereof by Yellow Cab Company.

CHICAGO YELLOW CAB COMPANY, INC.

By s/ BENJAMIN SAMUELS
President
(CORPORATE SEAL)

Attest:
s/ R. H. BIEZE
Secretary

Gov't Ex. No. 23. (May 9, 1933, Minutes of Stockholders Meeting of Chicago Yellow—)

The annual meeting of the Stockholders of Chicago Yellow Cab Company, Inc. was held at the office of the corporation, Room 332, 120 Broadway, in the City of New York, State of New York, on Tuesday, the 9th day of May, A. D. 1933, at the hour of two o'clock P. M. on said day.

The stockholders present at the meeting in person or by proxy organized by electing Benjamin Samuels as Chairman of the meeting, and F. H. Butehorn as Secretary of the meeting.

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The Secretary of the meeting then reported that stockholders owning Three Hundred Nine Thousand Nine Hundred Seventy-Six (309,976) shares of this corporation, out of a total of Four Hundred Thousand (400,000) shares of stock issued and outstanding entitled to vote, being
1905 the holders of more than a majority of the stock issued and outstanding entitled to vote at this meeting, were present in person or represented by proxies at this meeting.

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The Chairman then called the attention of the stockholders particularly to the minutes of the meetings of the Board of Directors held on November 17, 1932 and on January 19, 1933, which had been present and read to the meeting, and he presented to the meeting a copy of the Management Contract executed between The Transportation Management Corporation and Yellow Cab Company, a copy of the Agreement dated November 17, 1932 between Yellow Cab Company and Ernest H. Miller, and a copy of the Assignment of said Agreement by the Executrix of the Estate of Ernest H. Miller dated January 7, 1933, together with a letter dated January 17, 1933 executed by the assignee, addressed to Yellow Cab Company. He stated that this cor-

poration, as the sole stockholder of Yellow Cab Company, had approved the execution of the contracts of November 17, 1933 and that its directors had also approved the Assignment on the terms set forth in the documents he submitted to the meeting.

After full discussion of the documents presented to the meeting of the Chairman, the adoption of the following resolutions were thereupon moved and seconded:

> RESOLVED that all action of the Board of Directors and/or directors and officers individually, of this Corporation, in approving on its behalf the execution of the Management Contract dated November 17, 1932, between the Transportation Management Corporation and Yellow Cab Company, a subsidiary of this corporation, the Agreement dated November 17, 1932, between Yellow Cab Company, a subsidiary of this Corporation, and Ernest H. Miller, and the assignment of said Agreement and rights thereunder in accordance with the terms and provisions of the Assignment dated January 7th, 1933, and the letter dated January 17, 1933 relating thereto, be and the same hereby is in all respects ratified, approved, confirmed and adopted as and for the action of this Corporation.

* * *

The stockholders present in person or represented by proxy at the meeting, with the exception of The Waverly Corporation who refrained from voting, thereupon voted for and against the adoption of the foregoing resolutions, and upon canvassing the vote it was found and the Secretary reported that stockholders holding One Hundred Ninety-Nine Thousand Seven Hundred Twenty-Seven (199,727) shares of the common stock of the Corporation had voted in favor of the adoption of said resolutions, and that no stockholders of the Corporation had voted against the adoption of said resolutions, Mrs. Miller not voting because of 1906 interest. The Secretary then announced that the resolutions had been duly adopted by the stockholders holding a majority of the stock of the Corporation, excepting therefrom the stockholdings of The Waverly Corporation. Thereupon the representative of The Waverly Corporation at the meeting voted the shares of The Waverly Corporation in favor of the adoption of said resolutions, and filed such vote with the Secretary of the corporation.

Gov't. Ex No. 24. (June 1, 1934, Assignment of T.M.C. Rights and Obligations Under T.M.C.-Yellow Management Agreement of November 17, 1932 to Parmelee—)

All rights and obligations of The Transportation Management Corporation under the agreement dated November 17, 1932, between said The Transportation Management Corporation and Yellow Cab Company, relating to the furnishing of services in connection with the management, operation and development of said Yellow Cab Company, are hereby assigned to and assumed by Parmelee Transportation Company, a Delaware corporation, as of and from June 1, 1934, to the same extent and with the same effect as if said Parmelee Transportation Company were the company named as the "Management Corporation" in said agreement.

Dated, June 1, 1934.

THE TRANSPORTATION MANAGEMENT CORPORATION
By s/LEVIN RANK
President

Attest:
s/ R. J. WYATT
Secretary

PARMELEE TRANSPORTATION COMPANY
By s/ LEVIN RANK
President

Attest:
s/ R. J. WYATT
Secretary

We hereby consent and agree to the foregoing assignment, and accept Parmelee Transportation Company as the "Management Corporation" named in the agreement therein referred to.

Dated, June 1, 1934.

YELLOW CAB COMPANY
By s/ T. B. HOGAN
President.

Attest:
s/ H. H. BIEZE
Secretary

Approved: June 1, 1934.

CHICAGO YELLOW CAB COMPANY, INC.
By: s/ BENJAMIN SAMUELS
President

Attest:
s/R. H. BIEZE
Secretary

1907 *Gov't. Ex. No. 25, (December 19, 1935, Letter from D. P. Green of Kirkland, Fleming, Green & Martin, to the Board of Directors of Chicago Yellow—)*

There will be submitted for your consideration today the matter of extending for a period of three years the so-called Management Contract, whereby, for a fee of $50,000 per annum, Parmelee Transportation Company has agreed to furnish you and your subsidiary companies with managerial and operating advice and assistance. We have been requested by your President to prepare the extension agreement and the resolutions pertaining to the authorization of its execution.

We desire to avoid any inference on your part, from our having drafted the document and resolutions above referred to, that we have approved the proposed transaction and therefore take this opportunity of making our position clear.

In our opinion, your Board has the legal right and power to authorize the engagement of such experts, counsel and agencies as you may think necessary or advisable in the conduct of your business. The principal question for your consideration is whether or not the contemplated engagement is necessary or advisable in the transaction of your business, the fairness of the compensation in the light of the services to be rendered by Parmelee Transportation Company and the benefits to be derived by you and your subsidiaries from such services. These questions are matters of business judgment in the consideration of which you have the benefit of your experience during the past three years under the contract now expiring. We are not sufficiently familiar with that experience to warrant us in assuming any responsibilty in reaching a decision.

It is especially important that the questions to which we refer be given particular consideration in view of the fact that Parmelee Transportation Company, as we are informed, is your largest stockholder outside of The Waverly Corporation, and the President of Parmelee Transportation Company is one of your directors. This relationship will undoubtedly invite careful scrutiny of any Court or Commission which may have occasion to pass upon the transaction and therefore should prompt you to exercise the utmost caution in reaching your conclusion.

Gov't. Ex. No. 26. (December 19, 1935, Letter Agreement between Yellow and Parmelee—)

This will confirm our understanding with reference to the Management Contract, dated November 17, 1932, now in existence between us, viz., that the Management Contract as now constituted is hereby extended for a period of
1908 three years and shall expire on December 31, 1938, instead of December 31, 1935, as now provided. In addition, paragraph VIII, referring to Ernest H. Miller and his associates in said Management Contract is hereby eliminated. In all other respects said Management Contract, as extended, is hereby confirmed.

If the foregoing is satisfactory to you will you kindly signify your acceptance thereof in the place indicated below, and thereupon this letter shall be deemed an amendment and extension of said Management Contract?

Very truly yours

YELLOW CAB COMPANY
By s/ T. B. HOGAN
President

APPROVED:
CHICAGO YELLOW CAB COMPANY, INC.
By s/ BENJAMIN SAMUELS
President

The foregoing understanding
is hereby confirmed:

PARMELEE TRANSPORTATION COMPANY
By s/ LEVIN RANK
President

Gov't Ex. No. 27. (July 12, 1945, Letter from C. L. Passolt, Treasurer of Parmelee to C. P. G. Fuller.

We enclose herewith original copy of Agreement between Yellow Cab Company and Transportation Management Corporation, dated January 1, 1932; Memorandum of Agreement between Yellow Cab Company and Transportation Management Corporation, dated November 17, 1932; Agreement dated June 1, 1934 covering Assignment of the Agreement between Transportation Management Corporation and Parmelee Transportation Company; and Amendment and Extension of contract dated November 17, 1934 between Parmelee Transportation Company and Yellow Cab Company of Chicago, dated December 19, 1935.

I have been unable to find in our records any indication that the Management Contract between Yellow Cab Com-

pany and Parmelee Transportation Company was extended beyond December 31, 1938. I have called Mr. Bieze with respect thereto, and he advises me that their minutes say in effect that Parmelee Transportation Company has indicated its willingness to continue Management Contract expiring December 31, 1938 on a month to month basis at the rate of $3,000 per month; that the Contract will be identical with the Contract entered into on November 17, 1932, with the exception of Paragraph 5, which provides for the management fee.

I have also enclosed copy marked "Exhibit "F" 4, which is an agreement dated May 1, 1939 between the
1909 Transportation Management Corporation and Morris Markin. Also, copy of agreement dated November 19, 1942 between Transportation Management Corporation and Morris Markin covering the rate to be paid Mr. Markin up to and including December 31, 1935. I have been unable to find any record extending Mr. Markin's contract beyond that date and find nothing in the minutes prior to December 21, 1938, which reads, "Resolved, that the payment of a salary of $25,000 for the year 1938 to Morris Markin be and the same hereby is approved and ratified". The minutes of March 17, 1939 read, "Resolved, that the salary of Morris Markin as Management Advisor of this corporation, effective January 1, 1939, be fixed at the sum of $36,000 per annum, payable in equal monthly installments, said sum to include any traveling or any other expenses of Mr. Markin in performing his duties on behalf of this corporation and all actions of the officers of this corporation in paying him salary at said rates since January 1, 1939, be and the same hereby in all respects are ratified and approved:"

The minutes of September 18, 1942 provide, "Resolved, that there be paid to the executive officers of the corporation and to its Management Advisor a bonus of 25% of their respective salaries as presently constituted, Three-fourths of such bonus to be paid not later than September 30, 1942, and the balance to be paid not later than December 31, 1942."

We find nothing in our records with reference to Mr. Markin's salary for the year 1936 to 1937.

Gov't. Ex. No. 28. (Plaintiff's Interrogatory No. 19—)

To Parmelee. With respect to your denial of the allegation of paragraph 31 of the amended complaint that you assumed the management functions and contracts of The

Transportation Management Corp. in 1934, state the sums paid to you for management services each year from 1934 to 1946, inclusive, by Chicago Yellow, Yellow, and by each of your cab operating subsidiaries, respectively.

Gov't. Ex. No. 29. (Parmelee's Answer to Plaintiff's Interrogatory No. 19—)

Payments were made to Parmelee Transportation Company for management services each year from 1934 to 1946, inclusive, only by Yellow Cab Company (Chicago). Payments were made to Parmelee Transportation Company for information and statistical services by Yellow Cab Company of Pittsburgh, Pittsburgh Transportation Company and Yellow Taxi Company of Minneapolis. No managerial services were rendered to these subsidiaries. Payments by Yellow Cab Company (Chicago) were as follows:

1910	1934*	$29,166.99
	1935	50,000.00
	1936	50,000.00
	1937	50,000.00
	1938	50,000.00
	1939	36,000.00
	1940	36,000.00
	1941	36,000.00
	1942	36,000.00
	1943	36,000.00
	1944	36,000.00
	1945	36,000.00
	1946	36,000.00

* Seven months.

1911 *Gov't. Ex. No. 30. (July 5, 1929, Letter Agreement from E. H. Miller, President of Parmelee, to J. A. Sisto & Co—)*

July 5, 1929

PARMELEE TRANSPORTATION COMPANY

J. A. Sisto & Co.
68 Wall Street
New York City

Dear Sirs:

This will confirm our understanding with you as follows: To enable us to make delivery of common stock of the undersigned corporation in Pittsburgh, Pennsylvania, on

July 8, 1929, to certain stockholders of Yellow Cab Company of Pittsburgh, a Pennsylvania corporation, in part payment of their shares in said company, you hereby agree to lend to us 13,631 shares of common stock of Parmelee Transportation Company, and you agree to deliver to or upon the written order of Ernest H. Miller, President, or of F. L. Haveron, Secretary, certificates representing said shares in the names and denominations set forth in the schedule hereto annexed and made a part hereof. To secure such loan to us, we agree to deposit with you the sum of $300,000, to be held by you for the duration of the loan. Upon the return or issue to you of 13,631 shares of common stock listed on the New York Curb Exchange you agree to repay to us said sum with interest thereon at the rate of 2% below the average call rate, but not less than 6% per annum, from the date of the deposit thereof with you. It is understood that the duration of such loan shall be for thirty (30) days from the date of delivery of the certificates representing the loaned stock to or upon the written order of the officers above referred to, but the loan may be terminated by us at an earlier date on two days' written notice to you, wherefore the above mentioned deposit (with interest as above provided) shall be returned to the undersigned corporation upon the delivery to you of, valid certificates representing 13,631 shares of our common stock.

If the foregoing is in accordance with your understanding, kindly confirm the same in the place indicated below.

Very truly yours,

PARMELEE TRANSPORTATION COMPANY

By s/ E. H. MILLER
President

The foregoing understanding is hereby confirmed.

J. A. SISTO & Co.
By s/ J. A. SISTO
A General Partner

1912 SCHEDULE

The following shares are to be delivered in the following names in 100-share certificates to the extent possible and the balance in single odd lot certificates, respectively:

Names	*Address*	*Shares*
Walter S. Laird,	2 Ross Street	3,177
Wm. M. Laird, Jr.	2 Ross Street	1,588
Maud R. Laird,	2 Ross Street	1,588
Eleanor M. Laird,	2 Ross Street	2,991
Gertrude Laird Allen,	2 Ross Street	2,989
Alex W. Tennant,	2 Ross Street	493
Edward F. Kram,	2 Ross Street	621
A. R. Zelt,	2 Ross Street	147
John W. Weibley,	2 Ross Street	37
Total		13,631

Gov't. Ex. No. 31 (July 8, 1929, Letter Agreement from E. H. Miller, President of Parmelee to Parmelee regarding certain shareholders—)

July 8, 1929

Parmelee Transportation Company,
Wilmington, Delaware

Dear Sirs:

Referring to the issuance of certain shares of common stock to the undersigned, and as part of the consideration therefor, this will confirm our agreement with you as follows:

We jointly and severally agree that for a period of six months from the date hereof we will not sell, assign, pledge, loan, transfer or otherwise dispose of, or suffer to be sold, assigned, pledged, loaned, transferred or otherwise disposed of, any of the shares of common stock of Parmelee Transportation Company, a Delaware corporation, now held by us in the amounts set opposite our respective signatures, without your written consent, evidenced by a resolution of your Board of Directors. It is understood and agreed, however, that the terms of this agreement shall apply to any transfer of said shares of common stock except (but then only subject to the terms of this agreement) to one another, or to members of our respective immediate families, or to Parmelee Transportation Company, and in the event of any such permitted transfer, we jointly and severally agree to cause each such transferee (except Parmelee Transportation Company) to execute in his or her own name an agreement similar to this agreement.

Our agreements herein made shall be binding upon us and our respective successors, legal representatives and assigns, and shall enure to the benefit of your successors

and assigns; and shall also apply to the shares of
1913 common stock of Parmelee Transportation Company as they are now or as they may hereafter be constituted.

If the foregoing correctly expresses our agreement, kindly confirm the same in the place indicated below.

Very truly yours,

Name	*Number of Shares*
s/ Walter S. Laird	3177
s/ Eleanor M. Laird by Walter S. Laird	2991
s/ Edw. F. Kram	621
s/ Wm. M. Laird, Jr.	1588
s/ Maud R. Laird by Wm. M. Laird, Jr.	1588
s/ Albert R. Zelt	147
s/ Alex W. Tennant	493
s/ John W. Weibley	37
s/ Gertrude Laird Allen	2989
s/ Maud R. Laird	1588

The foregoing agreement is hereby confirmed.

PARMELEE TRANSPORTATION COMPANY

By /s/ E. H. MILLER
President

Gov't Ex. No. 32. (August 23, 1929, Agreement between Parmelee, P. L. Houston, W. A. Houston, M. M. Houston, and J. H. Houston—)

AGREEMENT made this 23rd day of August, 1929, by and between PARMELEE TRANSPORTATION COMPANY Wilmington, Delaware, a corporation of the State of Delaware, party of the first part (hereinafter called the "Corporation"), and P. L. HOUSTON, W. A. HOUSTON, M. M. HOUSTON and J. H. HOUSTON, of Pittsburgh, Pennsylvania, parties of the second part (hereinafter called the "Houstons"),

WITNESSETH:

1. The Houstons jointly and severally make the following representations and warranties:

(a) Pittsburgh Transportation Company (hereinafter called the "Green Cab Company") is a corporation duly organized and legally existing under the laws of the State of Pennsylvania, having an authorized capital stock of 10,000 shares of the par value of $50 per share of 7% Cumulative Callable Non-Voting Preferred Stock, of which not more than 3,360 shares and not less than 3,200 shares

(exclusive of shares held by the Green Cab Company) are outstanding, and 10,000 shares of the par value of $50 per share of Common Stock, of which 2,499 shares are outstanding. All of said shares of Preferred Stock and all of said shares of Common Stock have been duly and validly issued and are full paid and non-assessable. Said Preferred Stock is redeemable on thirty days' notice on any dividend date, such dividend dates being April 1, July 1, October 1 and January 1, at the option of the Green
1914 Cab Company at $52.50 per share and accrued dividends, and no default in dividends and in the opinion of the Houstons no default in any provision with respect thereto exists at the date hereof. The Houstons and their associates own or control all of said shares of Common Stock and in excess of 824 shares of said Preferred Stock (exclusive of shares held by the Green Cab Company), and will use their best efforts to obtain, for the purposes of this agreement, all of said shares of Preferred Stock.

(b) The Green Cab Company is engaged in the business of operating approximately 300 taxicabs in the City of Pittsburgh under the name of Green Cabs, and one bus. It has no subsidiary or affiliated companies and does its business directly. It has complied with all state and municipal statutes and ordinances in connection with its operations, and is duly authorized to operate 300 taxicabs and said bus under the restrictions set forth in the Public Service Company Law of Pennsylvania and the orders of the Public Service Commission authorizing its operations.

* * *

2. The Corporation is desirous of acquiring control, directly or indirectly, of all of the outstanding capital stock of Green Cab Company. The Houstons propose to organize a corporation under the laws of the state of Delaware for the purpose of carrying on a trucking and other business in and about the city of Pittsburgh under the name of Metropolitan Distributors Company (hereinafter referred to as the "Metropolitan Company"). Accordingly, pursuant to a plan of reorganization, the Corporation proposes, as hereinafter provided, to pay to Metropolitan Company certain cash and deliver to it certain shares of its Common Stock in exchange for all of the capital stock of said Metropolitan Company; and upon the acquisition of such stock, to exchange all of said stock for all of the Common Stock and at least a majority of the Preferred Stock of Green Cab Company issued and outstanding, the pur-

pose of the Houstons being that the exchange of stock shall be upon such reorganization basis as shall not result in the recognition of gain or loss to the Houstons upon the exchange of their Green Cab stock for the stock of the Metropolitan Company.

NOW, THEREFORE, in consideration of the mutual promises herein contained, and the sum of One dollar ($1) by each of the parties hereto to the other in hand paid, receipt whereof is hereby acknowledged, the parties hereto agree as follows:

I. Promptly upon the execution of this agreement, the Houstons shall organize or cause to be organized a corporation under the laws of the state of Delaware under the name of Metropolitan Distributors Company of Pittsburgh or some other name to be approved by them, with an authorized capital stock consisting of 35,000 shares of Common Stock having no par value or a par value of $1.00 per share. The Corporation agrees that it will, subject
1915 to the conditions hereinafter set forth, at or prior to the closing, acquire all of the authorized shares of capital stock of said Metropolitan Company in consideration of the issue to said Metropolitan Company of 1*,387 shares of the Common Stock of the Corporation and the payment of the sum of $400,018.50 in cash (subject to reduction as hereinafter provided). Immediately upon the execution of this agreement, the Corporation will pay to Peoples Savings & Trust Company of Pittsburgh the sum of $25,000 on account of the acquisition of the stock of Metropolitan Company, the balance to be paid to Metropolitan Company at the time of the closing as hereinafter provided . . .

* * *

The Houstons agree at the time of the closing to deliver to the Corporation the affidavit of P. L. Houston stating the price paid by the Houstons for such shares of Preferred Stock purchased by them prior to the closing as above provided. Nothing in this agreement contained to the contrary notwithstanding, the Corporation consents that the Houstons may prior to the closing borrow from the Green Cab Company sums not in excess of $50,000 for the purpose of enabling them to purchase for their own account Preferred Stock of said Green Cab Company: provided, however, that such sums so borrowed shall be repaid by the Houstons to Green Cab Company at or prior to the closing.

II. The Houstons shall cause the Green Cab Company to give to the Corporation, its counsel, accountants, and other agents, access to all books, ledgers, minute books, records, stock books, contracts, leases, deeds and other papers of the Green Cab Company at all reasonable times until the closing, and shall permit a representative of the Corporation to join the organization of the Green Cab Company, at the expense of the Corporation, and to advise with the Houstons with respect to operations.

III. The obligation of the Corporation hereunder to acquire such shares of stock of the Green Cab Company and/or Metropolitan Company from the Houstons, as above provided, is subject to the following conditions:

(a) That the Houstons shall have fully performed all their obligations hereunder so far as such obligations are to be performed prior to the date of closing.

(b) That the Houstons shall obtain for delivery to the Corporation hereunder at least 824 shares of the Preferred Stock, and all of the Common Stock of the Green Cab Company.

(c) That Messrs. Chadbourne, Hunt, Jaeckel & Brown, counsel for the Corporation, shall have approved all of the proceedings relating to the transfer and delivery of said shares of stock of the Green Cab Company and/or Metropolitan Company and/or of the Holding Company,
1916 and shall have approved all papers and proceedings in connection with the consummation of this agreement as herein provided.

(d) That at the closing Messrs. P. L. Houston, M. M. Houston, J. H. Houston and W. A. Houston shall have respectively agreed not to engage in, finance or in any way become interested in, either directly or indirectly, any business engaged in the transportation of passengers in Allegheny County, Pennsylvania for a period of ten years from the date of the closing without exception, except in so far as said parties may engage in or become interested in the business of the Corporation and/or the Green Cab Company and/or The Transportation Management Corporation, and the Corporation and/or the Green Cab Company and/or, The Transportation Management Corporation if they so desire, may be parties to said agreement which shall be in form satisfactory to counsel for the Corporation.

(e) That at the closing Messrs. P. L. Houston and either M. M. Houston or W. A. Houston will enter into a contract

of employment with the Green Cab Company in substantially the form set forth in Schedule C hereto annexed and made a part hereof.

(f) That at or prior to the closing, the Green Cab Company shall have entered into a management contract in substantially the form set forth in Schedule D hereto annexed and made a part hereof with The Transportation Management Corporation.

• • •

(k) That at the closing the Corporation shall be furnished with the resignations of such of the officers and directors as it may designate, and the Houstons agree to elect to the vacancies caused by any such resignations persons nominated by the Corporation.

(l) That at the closing the Corporation shall have received an agreement in form satisfactory to its counsel whereunder Metropolitan Company shall agree not to sell, assign, loan, pledge, transfer or otherwise dispose of shares of the Corporation deliverable hereunder, except to the Corporation or (subject to all the restrictions in this paragraph contained) to the Houstons and/or other stockholders of Metropolitan Company, without the consent of the Corporation evidenced by a resolution of its board of directors, for a period of one year from the date of closing with respect to 9,693 shares thereof and for a period of six months from the date of closing with respect to 9,694 shares thereof; it being understood that said recipients in any event will first give to Messrs. J. A. Sisto & Co., 68 Wall Street, New York City, an opportunity for twenty days to purchase the same at the then market price thereof prior to any disposition thereof by them for a period of three years from the date of closing.

(m) That the item appearing on the balance sheet, Schedule A annexed, entitled "Employees' Stock Sub-
1917 scription" and all agreements relating to subscription of stock of Green Cab Company shall have been cancelled at a cost to the Corporation not in excess of $1566.27.

• • •

V. The closing will take place at the office of the Peoples Savings & Trust Company of Pittsburgh, Pennsylvania, on a date not later than November 1, 1929, such date to be designated by the Corporation upon ten days' written notice to the Houstons, address to them c/o Charles K.

Robinson, Union Trust Company Building, Pittsburgh, Pennsylvania.

* * *

VII. The Houstons covenant and agree that at or prior to the closing, the Green Cab Company will make no unusual commitments or contract any liabilities or purchase any cabs or equipment or any shares of its Preferred or Common Stock except in the ordinary course of business, without the consent of the Corporation evidenced by a resolution of its board of directors, and that it will conduct its business in the ordinary manner. Consent is hereby given to the purchase by Green Cab Company of approximately 150 cabs manufactured by Checker Cab Manufacturing Corporation at a price not exceeding $2350 per cab upon such terms as may be agreed upon between Green Cab Company and Checker Cab Manufacturing Corporation, including the necessary financing through outside sources of unpaid installments, if any.

IN WITNESS WHEREOF, the parties hereto have executed this agreement in several counterparts as of the day and year first above written.

s/ P. L. HOUSTON (L. S.)
s/ M. M. HOUSTON (L. S.)
s/ W. A. HOUSTON (L. S.)
s/ J. H. HOUSTON (L. S.)

PARMELEE TRANSPORTATION COMPANY

By s/ F. L. HAVERON
Its Treasurer thereunto duly authorized

SCHEDULE C.

MEMORANDUM OF AGREEMENT made this day of 1929, by and between Pittsburgh Transportation Company, a Pennsylvania corporation (hereinafter referred to as the "Corporation"), party of the first part, and P. L. Houstong of the City of Pittsburgh, Pennsylvania, party of the second part, and M. M. Houston, of the City of Pittsburgh, Pennsylvania, party of the third part.

WITNESSETH:

The Corporation desires to employ Messrs. P. L. Houston and M. M. Houston as its operating managers
1918 for the term hereinafter mentioned, and Messrs. P. L. Houston and M. M. Houston desire to be so employed by the Corporation,

NOW, THEREFORE, in consideration of the mutual promises herein contained, the parties hereto agree as follows:

FIRST: The Corporation agrees with Messrs. P. L. Houston and M. M. Houston to employ them as its Operating Managers until December 31, 1931, for the compensation hereinafter mentioned.

SECOND: Messrs. P. L. Houston and M. M. Houston agree with the Corporation to act as its Operating Managers for said term, for the compensation hereinafter mentioned, and they agree to serve the Corporation faithfully and to the best of their ability, performing such duties as may be assigned to them by the Board of Directors of the Corporation and/or of Parmelee Transportation Company, a Delaware corporation, and/or of The Transportation Management Corporation, a Delaware corporation, and using their best efforts to make the conduct of the business of the Corporation successful. Messrs. P. L. Houston and M. M. Houston further agree that they will devote substantially all of their entire business time to the affairs of the Corporation, and that during the term of this agreement they will not become interested directly or indirectly in any firm, association or corporation that competes in any manner or in any degree with the business of the Corporation and/or of The Transportation Management Corporation and/or of Parmelee Transportation Company and/or of their respective subsidiaries or affiliated companies.

THIRD: The Corporation and Messrs. P. L. Houston and M. M. Houston mutually agree that Mr. P. L. Houston shall receive for his services hereunder, and that the Corporation shall pay therefor, an annual salary of Twelve Thousand Dollars ($12,000), payable monthly, and that Mr. M. M. Houston shall receive for his services hereunder, and that the Corporation shall pay him therefor, an annual salary of Seven Thousand Five Hundred Dollars ($7,500), payable monthly. In addition to such annual salaries, Messrs. P. L. Houston and M. M. Houston shall receive, and the Corporation shall pay, as additional compensation for their services hereunder, an amount equal to 5% of the net profits of the Corporation in excess of $50,000 per annum, beginning January 1, 1930, . . .

* * *

FOURTH: It is further understood and agreed that this agreement shall represent the sole understanding between the Corporation and Messrs. P. L. Houston and M. M.

Houston with respect to their employment by the Corporation, and any and all arrangements with respect to the salaries or compensation or employment of Messrs. P. L. Houston and/or M. M. Houston heretofore entered into shall be deemed to have been rescinded and abrogated by this agreement upon the execution and delivery hereof. It is further understood and agreed that this agreement 1919 shall not be modified, amended or terminated without the consent of Parmelee Transportation Company, evidenced by a resolution of its Board of Directors.

* * *

SCHEDULE D.

MEMORANDUM OF AGREEMENT made this day of 1929, by and between the Pittsburgh Transportation Company, a corporation organized and existing under the laws of the State of Pennsylvania (hereinafter referred to as the "Corporation"), party of the first part, acting for itself and for each subsidiary now existing or hereafter acquired or organized of the Corporation (the Corporation and such subsidiaries being hereinafter referred to collectively as the "Companies"), and The Transportation Management Corporation, a corporation organized and existing under the laws of the State of Delaware (hereinafter called the "Management Corporation"), party of the second part,

WITNESSETH:

The Management Corporation has been organized for the purpose, among other things, of engaging in the business of assisting in the management of motor transportation companies. It expects to receive compensation from companies to which it renders such assistance. Parmelee Transportation Company, a Delaware corporation, owns all of the capital stock of the Management Corporation. Parmelee Transportation Company expects that it or a sales company controlled by it will receive commissions from manufacturers of cabs and other motor vehicles, including Checker Cab Manufacturing Corporation, who sell or may sell their products to the Corporation.

In consideration of the mutual covenants herein contained the parties hereto agree as follows:

The Management Corporation will furnish to the Corporation and each of the Companies, its services, from time to time, in connection with the management, operation and

development of the Corporation and each of the Companies and their properties, as follows:

I. The Management Corporation will place at the service of the Companies its combined experience, advice and assistance and will aid in the solution of such problems as may arise in connection with the conduct of the business of the Companies and the operation of their properties and equipment.

II. The Management Corporation will furnish the services of its Auditing Department and its operating experts to review the accounting operations and methods of the Companies, and to recommend improved of new methods, with a view to reducing the operating cost of the Companies. The books and records of the Companies, including all books of account and statistical records, shall at all times be open to examination and inspection by the Management Corporation and its representatives.

1920 III. The Management Corporation will manage and supervise the purchasing departments of the Companies in the purchase of supplies, materials and equipment that may be authorized. The Management Corporation shall initiate and make recommendations to the executive officers and or directors of the Companies concerning such purchases, and none of the Companies or their officers shall enter into any agreements or give any orders for any such purchases, for amounts involving more than $500, without submitting the same in advance to, and consulting with the Management Corporation with respect thereto, and either obtaining the approval of the Management Corporation or instructions from the Board of Directors of the particular Company for which such purchase is to be made.

IV. The Management Corporation will furnish the services of its statistical experts to analyze the financial and operating reports of the Companies and to compare the operations shown therein with those obtained by other companies, in order that any uneconomical operations may be ascertained investigated and corrected.

V. The Management Corporation will furnish the services of its representatives in supervising the insurance necessary on the properties of the Companies.

VI. The Management Corporation will consult with and advise the executive officers of the Companies in promoting public relations and any modifications of existing fare

schedules; and it will consult with and advise the executive officers and directors of the Companies concerning its finances and financial requirements.

VII. The Management Corporation will employ on behalf of the Companies, and will supervise the activities of the departmental heads and superintendents of the Companies. It will also advise concerning the relations between the Companies and its employees (other than executive officers) and will assist in the selection of such employees and the fixing of the rates of compensation and wages to be paid to such employees. The Management Corporation shall have power to remove and discharge any employees of the Companies other than executive officers.

VIII. The Management Corporation shall advise and assist on any special technical problems arising in connection with any of the properties and equipment of the Companies, in instructing employees in the most economical method of operation, in the purchase and installation of new equipment, and shall supervise the preparation of specifications, contracts, purchase agreements, forms, certificates or other documents required in the purchase of equipment, supplies and materials.

IX. The Management Corporation shall supervise the advertising policy of the Companies; and it shall negotiate the making and renewal of leases on premises necessary or suitable to the business of the Companies. No officer or executive of any Company shall enter into any lease for the rental of premises without first consulting with the Management Corporation with respect thereto and either obtaining the approval of the Management Corporation or the approval of the directors of the Company for which such lease is to be made.

1921 X. The Companies, and their officers, executives and employees shall at all times consult, fully cooperate and advise with the Management Corporation and its officers and representatives concerning matters with respect to which the Management Corporation is employed under the terms of this Agreement.

XI. All contracts and orders placed by the Management Corporation, at the request of the Companies, shall be in the name of the Corporation, or of any such subsidiary, as the case may be. The Management Corporation shall be considered as acting solely as agent and is to assume no pecuniary liability under or by reason of any such obligation.

XII. The Corporation, on behalf of itself and the Companies, hereby employs the Management Corporation for each and every of the purposes for which the Management Corporation agrees to render its services under the terms of this Agreement.

XIII. As compensation for the services to be rendered by the Management Corporation to the Companies herein, the Corporation agrees to cause to be paid to the Management Corporation the sum of Ten Thousand Dollars ($10,000) per annum, payable in equal monthly installments beginning from the date of this Agreement.

XIV. The term of this Agreement shall be two (2) years from the date hereof.

XV. All services to be rendered by the Management Corporation under this Agreement shall be subject to the direction and control of the Board or Boards of Directors of the Corporation, and/or one or more of the Companies for which such services are to be rendered.

Gov't. Ex. No. 33. (October 7, 1929, Minutes of Directors' Meeting of CCM—)

Present:

Morris Markin	
Jack Polansky	Eugene W. Gillespie
Henry Weiss	F. L. Haveron
Jacques Moos	Albert F. Jaeckel

being a majority of the board of directors and a quorum. Mr. Markin, President of the Corporation, called the meeting to order and acted as Chairman thereof.

Mr. HAVERON, Secretary of the Corporation, acted as Secretary of the meeting and kept the minutes thereof.

* * *

The Secretary then presented to the meeting the printed lease of motor vehicles from this Corporation, as lessor, to Yellow Cab Company of Pittsburgh, lessee, and the agreement for assignment of same to The Union Trust Company of Pittsburgh, Trustee, dated September 16, 1929, and reported that the same had been executed and acknowledged on behalf of this Corporation by Ralph E. Oakland, Vice-President.

1922 Upon motion, duly made and seconded, the following resolutions were unanimously adopted:

RESOLVED that the lease of motor vehicles from this Corporation to Yellow Cab Company of Pittsburgh and the agreement for assignment of said lease to The Union Trust Company of Pittsburgh, as Trustee, dated the 18th

day of September, 1929, be and the same hereby are approved as to form; and

* * *

The Chairman then brought before the meeting the matter of making a similar lease for 150 cabs to Pittsburgh Transportation Company.

Upon motion, duly made and seconded, the following resolutions were unanimously adopted:

RESOLVED that this Corporation, as lessor, execute a lease for 150 taxicabs to Pittsburgh Transportation Company similar to the lease dated the 16th day of September, 1929, to Yellow Cab Company of Pittsburgh, and an assignment of same to Peoples-Pittsburgh Trust Company, with such changes in such lease and assignment as the President of this Corporation or Mr. Oakland, Vice-President, shall deem necessary or desirable;

Gov't. Ex. No. 34. (June 27, 1930. Bill of Sale by Robert J. Hasley, dba Red Cab Company, to Yellow Cab Company of Pittsburgh—)

BILL OF SALE

Know all men by these presents, that Robert J. Hasley, doing business as Red Cab Company of City of Pittsburgh, County of Allegheny and State of Pennsylvania for and in consideration of the sum of One and no/100 Dollars ($1.00) to him in hand paid by Yellow Cab Company of Pittsburgh, a corporation of City of Pittsburgh, County of Allegheny, State of Pennsylvania at or before the sealing and delivery of these presents, the receipts whereof is hereby acknowledged, has granted, bargained, sold, released and confirmed and by these presents does grant, bargain, sell, release and confirm unto the said Yellow Cab Company of Pittsburgh, a corporation, its successors and assigns all and singular the property, goods and materials mentioned in the Schedule hereunto annexed (endorsed) and marked with a letter A: To Have and to Hold the said property, goods and materials . . .

"A"

SCHEDULE TO THE WITHIN BILL OF SALE

17 Dodge Taxicabs (one damaged)
17 Atcograph Meters
24 Batteries

1923 Together with all other property, goods and materials, rights and privileges whatsoever being the property of Robert J. Hasley doing business as Red Cab

Company with offices at 1902 Brighton Road, Pittsburgh, Pennsylvania.

s/ ROBERT J. HASELY

Gov't. Ex. No. 35. (Plaintiff's Interrogatory No. 16—)

To Parmelee. State, with respect to your denial of part of the allegations of paragraph 25 of the amended complaint:

(a) The number of shares of stock of Red Cab Company purchased by Parmelee in June 1930;

(b) The names of all companies, other than those in which you owned stock, that operated cabs in Pittsburgh in June 1930.

(c) The names of each corporation which has been merged in, or whose assets have been acquired by, Yellow Cab Company of Pittsburgh, and by Pittsburgh Transportation Co., respectively, since January 1, 1929;

(d) The date of each merger referred to in subparagraph (c) of this paragraph;

(e) The date of each acquisition of assets, referred to in subparagraph (c) of this paragraph.

Gov't. Ex. No. 36. Parmelee's answer to plaintiff's Interrogatory No. 16:

(a) Red Cab Company was not a corporation but Parmelee Transportation Company purchased through Transportation Management Corporation the partnership of Robert J. Hasley and Nettie D. Lewis, trading as the Red Cab Company and registered under the fictitious name act at the Prothenotary office of Allegheny County, for the sum of $47,515.58.

Parmelee Transportation Company added to its investment in the Yellow Cab Company of Pittsburgh and Pittsburgh Transportation Company the cost of acquiring the Red Cab Company, adding $24,257.79 to its investment in each of these companies.

(b) Companies, other than those in which Parmelee Transportation Company owned stock, and individuals that held certificates of public convenience and operated cabs in Pittsburgh in June 1930, were as follows:

1924 Greenway, Geo. Co.
Glenn, Cobert L.
Red Cab Company
Lai, Geo. J.

Garavini, Andy
Gerber, Robt.
Kennedy, E. H. (McKeesrocks Taxi)
Airlines Transportation Co., formerly trading under the name of Lewis W. Rogers
Dawson, J. J.
Riemer, J. L.
Tube City Taxi
Frdel, Henry

(c) and (d), Pittsburgh Transportation Company was merged into Yellow Cab Company of Pittsburg, December 31, 1946 pursuant to order of the Public Utility Commission of Pennsylvania.

(e) None.

Gov't. Ex. No. 37. (Plaintiff's Interrogatory No. 8—)

To Parmelee. With respect to your denial of the allegations of paragraph 16 of the amended complaint, state the total number of cabs licensed for operation in the City of Pittsburgh by your subsidiaries on about August 29, 1947.

Gov't. Ex. No. 38. (Parmelee's answer to plaintiff's interrogatory No. 8—)

The total number of cabs licensed for operation on August 29, 1947 in the City of Pittsburgh by the Yellow Cab Company of Pittsburgh, Parmelee Transportation Company's sole subsidiary operating cabs in that city, was 460.

Gov't. Ex. No. 39. (November 13, 1942, Letter from R. J. Wyatt to M. Markin, with Attachments Summarizing Parmelee Status of Investment in Yellow of Pittsburgh—)

Answering yours of October 19th, I am enclosing statement concerning the Pittsburgh Companies which we have reconstructed and which you desire for your file.

* * *

PARMELEE TRANSPORTATION COMPANY

STATUS OF INVESTMENT IN YELLOW CAB COMPANY OF PITTSBURGH

Parmelee Transportation Company acquired the stock of Yellow Cab Company of Pittsburgh in the latter half of 1929.

For this interest Parmelee gave the following:

1925	Cash	$384,347.00
	Parmelee Stock (13,631 Shares at $10.00)	136,310.00
		$520,657.00
	With the issuance of the 13,631 Shares of Parmelee Stock, the investment account was increased by as a result of setting up the investment at a value of $24.50 rather than the $10.00 stated value per share of Parmelee, and said valuation was offset by a credit of like amount of Parmelee's Capital Surplus Account,	197,649.50
	Total	$718,606.50
	In December 1932, one-half of the cost of acquiring the Reff Cab Company of Pittsburgh was added to the investment account of Yellow Cab Company of Pittsburgh	24,257.79
		742,564.29

* * *

Surplus at acquisition—1929	$278,013.08
Net Losses since acquisition	223,018.77
	$ 54,994.31
Dividends Paid	326,223.45
Earned Surplus Deficit, January 1, 1942	$271,299.14
Paid In Surplus—	
1929	$ 2,031.05
1933—Contribution to Capital Surplus by forgiveness of part of Yellow Debt to Parmelee	202,840.00
1936—Cash contribution by Parmelee	125,000.00
Balance January 1, 1942	$329,871.05
Net Surplus, January 1, 1942	$ 58,641.91
Capital Stock	209,790.00
Net Worth, January 1, 1942	$268,431.91

PARMELEE TRANSPORTATION COMPANY
(YELLOW CAB COMPANY OF PITTSBURGH)

Net Worth at Acquisition 1929		$489,834.13
Net Worth, January 1, 1942		268,431.91
Net Reduction		$221,402.22
Net Losses since Acquisition		$223,018.77
Dividends Paid		326,223.45
		549,242.22
1926	Contributions by Parmelee	327,840.00
Losses to be recovered before Parmelee really earns anything on its original investment of $742,564.29		$221,402.22

Gov't Ex. No. 40. (October 31, 1929, Minutes of Directors Meeting of Parmelee—)

Present:

E. H. Miller	Graham Adams
Austin J. Bruff	Norris B. Henrotin
Douglas Moffatt	F. L. Haveron

being a quorum.

Mr. Miller acted as Chairman and Mr. Haveron as Secretary of the meeting.

• • •

The Chairman reported that the purchase of the stock of Pittsburgh Transportation Company had been concluded, and that the Company, after paying the cash involved in that purchase, had over $300,000 in cash; that the earned surplus of the Company for the period from April 12 to September 30, 1929, after debenture interest and preferred stock dividends, was in excess of $375,000, and that the two Pittsburgh companies were beginning to show improved earnings.

• • •

The Chairman reported that he had been negotiating for the acquisition by this Company of the stock of De Luxe Motor Cab Company of Chicago. This company has licenses for the operation of about 360 cabs in the city of Chicago, and since the passage of an ordinance limiting the number of cabs in Chicago, he considered that these licenses had a substantial value, and that licenses at $1,000 per cab should be considered cheap; that the company did not operate the cabs itself, but that they were operated under a cooperative system by drivers, under an arrangement with the company whereby the company made a substantial profit on the cost price of the cabs, and rendered service to the drivers in garaging, repairing, sale of equipment and the like. He stated further that there was only three large companies in Chicago, and that by acquiring the DeLuxe Company this Company would in effect control the operation of two out of three large operating companies; that the DeLuxe Company had not been in a position to obtain and operate Checker cabs when they were first used in Chicago, but that it was now in a position to do so, and that although it had some losses rather than profits for sometime past, he was of the very definite opinion that the company's business had now turned the corner and was making profits; that with the new ordinance limiting the number of cabs in Chicago, the acquisition was

1927

a highly desirable one for the Company to make. He stated that the DeLuxe Company was now owned by Mr. Morris Markin who had indicated his willingness to sell it to this Company for the sum of $100,000 in cash and 16,000 shares of common stock of this Company.

The Chairman presented a form of balance sheet of the DeLuxe Motor Cab Company as of August 31, 1929, which indicated a net worth of about $100,000. He stated that the mortgage notes amounting to about $330,000 represented the purchase price of cabs and that an item of about $363,000 represented cabs owned by the company but operated by its drivers. He also stated that in the purchase of these properties, it was proposed that this Company assume no liabilities other than the mortgage notes payable.

The Chairman further stated that he estimated that the earnings under the conditions which would exist after the purchase by this Company should amount to about $100,000 a year; and that in his opinion manufacturing companies and companies not now operating in Chicago would be glad to pay more for the DeLuxe Motor Cab Company than was proposed under his negotiations with Mr. Markin.

After discussion, and on motion duly made and seconded, the following resolutions were unanimously adopted:

RESOLVED, that the President of the Corporation be and he hereby is authorized to negotiate for the acquisition of all of the outstanding stock of DeLuxe Motor Cab Company for the sum of $100,000 in cash and 16,000 shares of stock of this Corporation, or in the alternative, for the sum of $388,000 in cash provided that he shall have found a purchaser for 16,000 shares of unissued stock of this Corporation at not less than $18 a share; and to make execute and deliver a contract to that end on behalf of this Corporation, such contract to provide that the acquisition be subject to legal approval and audits, and to provide further that this Corporation should assume no liabilities of the DeLuxe Motor Cab Company other than the mortgage notes appearing on the balance sheet submitted to this meeting and such additional mortgage notes as may have been issued in the ordinary course of business for the purchase of equipment;

FURTHER RESOLVED, that pending the preparation of such contract, the President be authorized to pay Morris Markin the sum of $25,000 as earnest money against such purchase.

Gov't Ex. No. 41. (January 30, 1930, Minutes of Directors Meeting of Parmelee—)

1928 Present: Ernest H. Miller Graham Adams
Norris B. Henrotin Austin J. Bruff
Douglas M. Moffatt F. L. Haveron

being a majority of the Board of Directors of the Corporation and a quorum. The meeting reconvened pursuant to adjournment.

Mr. Miller, the President of the Corporation, called the meeting to order and acted as Chairman thereof. Mr. Haveron, Secretary of the Corporation, acted as Secretary of the meeting and kept the minutes thereof.

• • •

The Chairman then stated the circumstances had arisen which necessitated a revision of the contemplated acquisition by this Corporation of all of the capital stock of DeLuxe Motor Cab Co., an Illinois corporation, determined upon by this Board of Directors at their special meeting, held on October 31, 1929. He further stated that the consummation of this purchase as resolved upon by the Board of Directors had been delayed upon the advice of counsel, inasmuch as there were certain points in connection with DeLuxe Motor Cab Co. and with its operations under the laws of Illinois which should be adjusted before this Corporation should make the purchase. A general discussion of the method of revising the transaction then ensued.

Certain of the directors desiring to avail themselves of an opportunity to go into the matter in more detail, it was thereupon, upon motion duly made and seconded, unanimously

RESOLVED that the purchase of the capital stock of DeLuxe Motor Cab Co., an Illinois corporation, as contemplated by this Board of Directors at its meeting held on October 31, 1929, be held in abeyance until a further meeting of this Board of Directors thereon, and that the adoption of any revision of the plan of acquisition be presented to this Board of Directors at a later meeting, when certain of the directors of this Corporation have had an opportunity to familarize themselves with the situation.

The Chairman then reported upon the developments of the taxi drivers' strike in Pittsburgh in which Pittsburgh Transportation Company and Yellow Cab Company of Pittsburgh were involved and he stated that although the

situation was serious it was his expectation that the strike would be settled within thirty days.

The Chairman then stated that he deemed it advisable for The Transportation Management Corporation, a subsidiary of this Corporation, to acquire additional taxi operations in the City of Pittsburgh, Pennsylvania, from Robert Hasley and Nettie Lewis. He stated that a proposed form of contract had been prepared by counsel in Pittsburgh, Pennsylvania, and had been submitted to counsel in New York City, New York, who had made certain comments thereon and he presented to the meeting a memorandum of said comments and said proposed form of contract.

1929 After discussion of said form of contract and said comments, the following resolutions were, upon motion duly made and seconded, unanimously adopted:

RESOLVED that the acquisition pursuant to the terms of the form of contract presented to this meeting, of additional taxi operations in the City of Pittsburgh, Pennsylvania, by The Transportation Management Corporation, a subsidiary of this Corporation, from Robert Hasley and Nettie Lewis, be approved and the President of this Corporation is authorized and directed to take all action he may deem necessary or convenient in the premises.

* * *

The Chairman then stated that the management of DeLuxe Motor Cab Co. was, on December 15, 1929, taken over by The Transportation Management Corporation, a subsidiary of this Corporation. He then presented to the meeting a form of contract to be entered into by General Transportation Corporation, this Corporation, Morris Markin and Paul C. L'Amoreaux, relating to the acquisition of all of the capital stock of DeLuxe Motor Cab Co. and the sale by this Corporation to Morris Markin and Paul C. L'Amoreaux of 16,000 shares without par value of its common stock at $18 per share pursuant to resolutions heretofore adopted by this Board of Directors. The Chairman then stated that in view of certain legal complications which had arisen in connection with the acquisition of the capital stock of DeLuxe Motor Cab Co., the plan of acquisition determined upon by the Board of Directors of this Corporation on October 31, 1929, had been revised and that the new plan of acquisition was set forth in the said form of agreement. He further stated that the vendors of said capital stock of DeLuxe Motor Cab Co. would be under obligation under certain conditions to repurchase said

capital stock at a price equal to the present asset value of DeLuxe Motor Cab Co. but in such event The Transportation Management Corporation, a subsidiary of this Corporation, would continue to maintain its management arrangements with DeLuxe Motor Cab Co. under which The Transportation Management Corporation now receives an amount equal to 75% of the net profits of DeLuxe Motor Cab Co. as a management fee.

Mr. Albert F. Jaekel, counsel for this Corporation, being present at the meeting, then outlined the legal aspects of the situation to the Board of Directors and stated that in his opinion every precaution had been taken to provide against the possibility of General Transportation Corporation finding it advisable to dispose of the stock of DeLuxe Motor Cab Co. at a future date. The Chairman then recommended that the transaction be consummated on the revised basis as set forth in the form of agreement hereinbefore mentioned and presented to this meeting. After full discussion of the terms and provisions contained in the arrangement and supplemental understanding which were explained to the meeting, the following resolutions were, upon motion duly made and seconded, unanimously adopted:

1930

RESOLVED that the form of agreement to be entered into by this Corporation, Morris Markin, Paul C. L'Amoreaux and General Transportation Corporation, and the terms and provisions therein contained, be and the same hereby are in all respects approved . . .

Gov't. Ex. No. 42. (February 5, 1930, Agreement between Parmelee, Markin, L'Amoreaux, and G. T. C. regarding DeLuxe, with Schedules A and B attached—)

AGREEMENT dated the fifth day of February, 1930, by and between Parmelee Transportation Company, a corporation of the State of Delaware, party of the first part (hereinafter called the "Corporation"), Morris Markin and Paul C. L'Amoreaux, parties of the second part (hereinafter called the "Sellers") and General Transportation Corporation, a corporation of the State of Delaware, party of the third part (hereinafter called "General"),

WITNESSETH:

1. The Sellers jointly and severally make the following representations, warranties and agreements:

(a) DeLuxe Motor Cab Co. (hereinafter called "DeLuxe"), is a corporation duly organized and legally exist-

ing under the laws of the State of Illinois having an authorized capital stock of 3,500 shares without par value, all of which are outstanding and have been duly and validly issued and are full paid and non-assessable, and there are no further shares authorized to be issued, or any agreements to authorize or issue any further shares, except an agreement to issue 1,630 shares of capital stock to LaSalle Discount Corporation, which will be terminated without the issuance of said shares and without cost to DeLuxe or to General or to the Corporation prior to the closing hereinafter provided for. The Sellers own or control all of said shares of stock except 45 shares, and will obtain, for the purposes of this agreement, all of said 45 shares of stock.

(b) DeLuxe is engaged in the business of operating at present approximately 308 taxicabs in the City of Chicago under the name of "DeLuxe Cabs", all of which cabs are operated under contracts in substantially the form of the "Drivers' Contract" attached hereto and made a part hereof as Schedule A. DeLuxe has been licensed and/or has good and valid licenses to operate 400 taxicabs in the City of Chicago for the year 1930. DeLuxe owns all of the cabs actually operated subject only to chattel mortgages securing the purchase price thereof and to the terms and conditions of said "Drivers' Contracts", and has
1931 complied with all state and municipal statutes and ordinances relating to its operations and the maintenance of its licensee to operate 400 taxicabs. DeLuxe conducts its business directly and has no subsidiary or affiliated companies.

. . . DeLuxe has no long term or unusual contracts of any nature except a management contract with The Transportation Management Corporation, a Delaware corporation, and a contract with Checker Cab Manufacturing Corporation, a New Jersey corporation, with which the parties hereto are familiar, . . .

2. General is desirous of acquiring all of the outstanding capital stock of DeLuxe and the Corporation is desirous of finding a purchaser for 16,000 shares without par value of its own common stock at the price of $18 per share. The Sellers are desirous of selling their shares in DeLuxe to General and are also desirous of purchasing shares of the common stock of the Corporation.

Now, Therefore, in consideration of the mutual promises herein contained and of the sum of One Dollar ($1) by each of the parties hereto the others in hand paid, receipt

whereof is hereby acknowledged, the parties hereto agree as follows:

I. General Agrees to purchase from the Sellers, subject to the condition hereinafter set forth, and the Sellers agree to sell and deliver to General all of the outstanding capital stock of DeLuxe in consideration of the payment to the Sellers, or upon their order, of the sum of $388,000 in New York funds, of which sum $25,000 has been paid by General to the Sellers at or prior to the execution and delivery of this Agreement, receipt whereof the Sellers hereby acknowledge. . . .

II. The Sellers agree to purchase from the Corporation at the closing above provided for, simultaneously with the delivery to General of the shares of stock in DeLuxe and the payment by General for such shares, as above provided, and the Corporation agrees to sell to the Sellers, subject to the conditions hereinafter set forth, 16,000 shares without par value of its common stock at the price of $18 per share, the certificates for such shares to be in such names and denominations as the Sellers shall designate to the Corporation in writing at least five (5) days prior to the closing or, in the absence of such designation, in 100-share lots in the names of the Sellers jointly. . . .

SCHEDULE A

DRIVER'S CONTRACT

This Contract, Made and entered into by and between DeLuxe Motor Cab Co., an Illinois corporation, (hereinafter sometimes for convenience referred to as the Company); and _____ (hereinafter sometimes for convenience referred to as the Driver).

WITNESSETH: That the Company does hereby employ the driver and the driver hereby accepts such employment, on the following terms and conditions, to-wit:

1932 (A) The Company covenants and agrees:

1: To allot to the driver that certain taxicab manufactured by the Checker Cab Manufacturing Corporation, of Kalamazoo, Michigan, Chassis No. ..... Engine No. ..... Company Cab No. ..... subject however, to chattle mortgage appearing of record, to be operated by the Driver for the Company as a taxicab for hire in the City of Chicago, Illinois, and its environs, during the life of said cab.

2: That it will cause said taxicab to be duly licensed and bonded under the city ordinances of the City of Chicago,

and state laws of the State of Illinois, and will cause all other licenses to be taken out (if any shall be necessary) to enable said taxicab to be operated as a taxicab for hire during the period of this agreement.

3: To furnish the Driver telephone service, cab stands, garages (particular garage to be assigned by the Company from time to time), washing and cleaning service, fire and theft insurance covering the operation and use of said cab.

4: To hold the Driver harmless and to itself pay and discharge all just and valid claims that may be made during the term of this employment contract by passengers or the public on account of loss or injury to property, or personal injuries sustained by passengers or the public arising out of operation of said cab.

5: At the request of the Driver, to employ a man to work double shift (as that term is herein defined) with the Driver, but, in the event the Driver shall nominate a man for such purpose, the Company shall first be satisfied with the character and ability of the man nominated and shall indicate such satisfaction by a writing.

6: Pay to said Driver, as and for his compensation, all fares and revenues received by the Company from the operation of said taxicab in excess of the aggregate of the following items (hereinafter termed as charges to Driver's earnings:

(a) The sum of $.... per day in the event said cab is operated single shift as hereinafter defined and $..... pay day in the event said cab is operated double shift as hereinafter defined covering depreciation and all service charges, it being understood that, upon thirty (30) days notice in writing to the Driver, the Company shall have in its sole and exclusive discretion the right to make reasonable revision thereof, depending upon the total cost to the Company for taxes, licenses, insurance, the number of stands and concessions leased by the Company and any other expense or overhead of the Company.

(b) Charges for tires, gasoline, oil and other supplies and accessories furnished by the Company and required in the operation of said cab, together with all charges for repairing, adjusting, greasing, oiling and towing as
1933 may be needed in the operation of said cab, which charges, however, shall be at prices below the general prevailing retail prices for like goods and services.

(c) All expenses incident to the repair of said cab for damage to said cab caused by accident, or otherwise.

(d) All charges incurred in keeping said cab well painted and in good mechanical order and condition so that the same may be operated as a first-class taxicab for hire during the entire term of this agreement.

(B) The Driver covenants and agrees:

1: To accept said employment for the life of said cab, and to use his entire time, talents, care and energies in the safe, faithful, honest and courteous operation thereof for hire in the territory in paragraph 1 described.

2: Pay the Company in consideration of the execution of this agreement, the sum of $..... the receipt whereof is hereby acknowledged.

3: To keep, preserve, and obey the rules and regulations of the Company, a copy of which is hereto attached, with such changes and amendments thereof, and also such other and further and additional reasonable rules and regulations as may be hereafter promulgated by the Company.

4: To procure from time to time, during the life of this agreement, at his own expense, all chauffeur's licenses, required by the city ordinances and the state laws, to enable him to perform his covenants and agreements, as herein contained.

(C) It is mutually covenanted and agreed by and between the Company and the Driver:

1: That the terms "single shift" and other equivalent words and phrases, if any, in this agreement is hereby defined to mean a cab driven by one man, and the term "double shift" is hereby defined to mean a cab driven by two men.

2: The Driver shall have and is hereby given an option to purchase said taxicab at any time hereafter by giving ten (10) days notice in writing to the Company of his desire so to do, upon the following terms and conditions:

(a) By payment to the company of the sum of $..... less a sum of money determined my multiplying the days elapsed since the execution of this agreement, less any exceptions mutually agreed upon during the term of this contract by $....., or $..... and the covenants of the Company.

(b) If such purchase is made after the revenues received by the Company from the operation of said cab aggregate the sum of $..... together with all charges against driver's earnings arising under paragraph 5 of the covenants of the Company above, then and in that event the Company agrees to accept, in full payment for said cab,

the sum of One Dollar ($1.00), together with the surrender and cancellation of this contract.

1934 (c) In case of the exercise of this option, it is expressly agreed as a condition precedent to the exercise thereof, that Driver shall, at the time of said exercise, repaint said taxicab to the satisfaction of the Company so as to entirely remove the name of the Company therefrom and also the color combination characteristics of the cabs of the Company.

(d) On the exercise of the option above provided for, the Company shall make, execute and deliver to the Driver a bill of sale in the usual form, conveying title to said Driver in said cab free and clear of all liens and encumbrances.

3: The Company reserves the right to cancel and declare null and void this contract and discharge said Driver in the event:

(a) Of the failure of the Driver to keep his covenants in Section (B) paragraphs 1, 2, 3 and 4 in this agreement set forth.

(b) The revenues from said cab shall at any time hereafter be less than the sum of the charges against Driver's earnings computed as in paragraph 6 of the covenants of the Company provided.

4: No indulgence granted by the Company to the Driver hereunder, in failing to exercise its option to cancel this agreement and discharge said Driver, or otherwise, as hereinabove provided, shall be construed as a waiver of any of its rights under this contract, to declare subsequent defaults or otherwise.

Gov't. Ex. No. 43. (Plaintiff's Interrogatory No. 17—)

To Parmelee. With respect to your denial of certain of the allegations in paragraphs 27 and 28 of the amended complaint, state:

(a) The consideration paid by General Transportation Corporation in February 1930 for the stock of DeLuxe and to whom it was paid:

(b) The amount of stock of Parmelee acquired by Markin in 1930 and its date of acquisition:

(c) The amount of stock of Parmelee acquired by L'Amoreaux in 1930 and its date of acquisition.

Gov't. Ex. No. 44. (Parmelee's Answer to Plaintiff's Interrogatory No. 17—).

(a) DeLuxe Motor Cab Company was purchased for 16,000 shares of stock of Parmelee Transportation Com-

pany valued at $18.00 per share plus $79,555.42 each and the assumption of liabilities of DeLuxe in the amount of $20,444.58 (which were never paid). $79,555.42 cash was paid to Mr. Markin.

(b) Mr. Markin acquired 8,000 shares of stock of Parmelee Transportation Company from the company on February 11, 1930.

(c) Mr. L'Amoreaux acquired 8,000 shares of stock in Parmelee Transportation Company from the Company on February 11, 1930.

1935 *Gov't Ex. No. 45. (May 28, 1930, Minutes of Directors Meeting of Parmelee—)*

Present: Ernest H. Miller, Norris B. Henrotin
Harold C. Hodgson F. L. Haveron
Douglas Moffat

being a majority of the Board of Directors and a quorum.

Mr. Miller, President of the Corporation, called the meeting to order and acted as Chairman thereof.

* * *

The Chairman then stated that he was conducting negotiations with Michael M. Sokoll of Chicago for the formation of a taxicab unit in Chicago around the DeLuxe Motor Cab Co. The plan provided for the transfer of the stock owned by this Corporation in General Transportation Corporation which owns all, except 10½ shares, of the capital stock of DeLuxe Motor Cab Co. to Voting Trustees, and the delivery of 50% of the voting trust certificates representing said General Transportation Corporation stock to Michael M. Sokoll, in consideration of the delivery by Michael M. Sokoll to DeLuxe Motor Cab Co. of complete and valid licenses to operate at least 350 taxicabs in the City of Chicago, Illinois, the conveyance to DeLuxe Motor Cab Co. of the cab equipment of several independent operators in Chicago, and the execution by operators in Chicago of employment contracts with DeLuxe Motor Cab Co. The Chairman further stated that the felt this plan would permit DeLuxe Motor Cab Co. to commence to make earnings and the he felt that under the present methods of operation DeLuxe Motor Cab Co. would not be in a position to show a profit for a considerable length of time. He further stated that he believed that the combining of these independent operators in Chicago with DeLuxe Motor Cab Co. into one operation would be a profitable one, and in addition would prevent some outside company from entering the taxicab operating

field in Chicago in competition with the Yellow Cab Company, and thereby rgducing the value of this Corporation's investment in Chicago Yellow Cab Company, Inc. He pointed out to the Board of Directors that, while The Transportation Management Corporation had a management contract which insured protection for the investment of this Corporation in DeLuxe Motor Cab Co., in the event that the title of this Corporation to the common stock of DeLuxe Motor Cab Co. was attacked, this management contract would have to be terminated. He presented to the meeting a form of contract to be entered into between Paul C. L'Amoreaux, as nominee of this Corporation and of General Transportation Corporation, and Michael M. Sokoll to consummate the proposed plan.

After a complete discussion of the terms and provisions of the form of contract and the plan presented to the meeting by the Chairman, the following resolutions were, upon motion duly made and seconded, unanimously adopted:

RESOLVED that the form and provisions of the proposed contract relating to the combination of the operations
1936 of DeLuxe Motor Cab Co. with other taxicab operating companies as in Chicago, Illinois, between Paul C. L'Amoreaux, as nominee of this Corporation and of General Transportation Corporation, and Michael M. Sokoll, presented to this meeting, be and they hereby are in all respects approved;

Gov't. Ex. No. 46. (June 10, 1930, Minutes of Directors Meeting of Parmelee—)

Present: Ernest H. Miller — Douglas Moffat
Norris B. Henrotin — Harold C. Hodgson
F. L. Haveron

being a majority of the Board of Directors and a quorum

Mr. Miller, President of the Corporation, called the meeting to order and acted as Chairman thereof. In the absence of the Secretary, Mr. A. G. Steckler, Assistant Secretary of the meeting and kept the minutes thereof.

* * *

The Chairman then reported upon the operations controlled by this Corporation in Pittsburgh and stated that additional cabs had been purchased and that the Yellow Cab Company of Pittsburgh and Pittsburgh Transportation Company were maintaining a seventy per cent operation. He further stated that he had paid $20,000 to counsel

for services rendered in connection with the recent taxicab strike.

Upon motion duly made and seconded, the following resolution was adopted:

RESOLVED that all action taken by the officers of this Corporation in connection with the operations of the subsidiaries of this Corporation in Pittsburgh, Pennsylvania, as reported to this meeting, be, and the same hereby are approved.

The Chairman then stated that the proposed formation of a taxicab unit in Chicago around DeLuxe Motor Cab Co. with Michael M. Sokoll had presented several important legal questions which had arisen in connection with the negotiations with Messrs. Morris Markin and Paul C. L'Amoreaux and, in view of his contemplated absence in Europe, he suggested that the Board authorize the consummation of the transaction in his absence.

Upon motion duly made and seconded, the following resolutions were unanimously adopted:

RESOLVED that the formation of a taxicab unit in Chicago around DeLuxe Motor Cab Co. with Michael M. Sokoll be carried into effect by any of the officers of this Corporation, acting with the approval of counsel are authorized, directed and empowered to execute such papers,

to take such action and to make such arrangements

1937 with Messrs. Morris Markin and Paul C. L'Amoreaux

with respect thereto as may be necessary or convenient in the premises.

Gov't. Ex. No. 47. (June 21, 1930, Minutes of Directors Meeting of CCM—)

Present: Morris Markin, Norris B. Henrotin, Eugene F. Gillespie, F. L. Haveron, Graham Adams, Albert F. Jaeckel, Henry Weiss, Jack Polansky, and Jacques Moos

being all of the Board of Directors in office and a quorum.

Mr. Markin, President of the Corporation, called the meeting to order and acted as Chairman thereof. Mr. Haveron, Secretary of the Corporation acted as secretary of the meeting and kept the minutes thereof.

* * *

The Chairman then stated that although this Corporation had a contract with DeLuxe Motor Cab Co., an Illinois corporation, whereunder DeLuxe Motor Cab Co. had agreed to purchase all of its taxicab requirements of this Corpora-

tion, he deemed it advisable to cancel said contract inasmuch as to do so would permit the reorganization of DeLuxe Motor Cab Co. in Chicago to place it on a profitable basis. He further pointed out to the Board of Directors that Parmelee Transportation Company had an interest in DeLuxe Motor Cab Co. and that it was advantageous to the Parmelee Transportation Company that DeLuxe Motor Cab Co. should be reorganized.

Upon motion duly made and seconded the following resolution was unanimously adopted:

RESOLVED that the proper officers of this Corporation are authorized, directed and empowered to execute such instruments as may be necessary or convenient to duly terminate the contract now existing between this Corporation and DeLuxe Motor Cab Co. relating to the purchase by DeLuxe Motor Cab Co. of its taxicab requirements from this Corporation, and to take such other and further action as may be necessary or convenient in the premises.

Gov't. Ex. No. 48. (January 12, 1931, Minutes of Directors Meeting of Parmelee—)

Present: Morris Markin, E. H. Miller, Douglas Moffat, E. S. Higgins, Paul C. L'Amoreaux

being a majority of the Board of Directors and a quorum.

Mr. Markin, Chairman of the Board of Directors, called the meeting to order and acted as Chairman thereof. In the absence of the Secretary of the Corporation, Mr. Charles G. Fulier was duly appointed Secretary of the meeting and kept the minutes thereof. * * *

* * *

1938 Mr. L'Amoreaux then addressed the meeting and stated that one of the conditions to the consummation of the contract entered into by Michael M. Sokoll and Paul C. L'Amoreaux, acting on behalf of this Corporation and General Transportation Corporation, in connection with the reorganization of DeLuxe Motor Cab Co., was that Mr. Sokoll would obtain 350 additional licenses to operate taxicabs in the City of Chicago, Illinois, and that due to existing conditions and other circumstances it had been found unnecessary to operate more than between 200 and 250 taxicabs, and that he deemed it advisable to close the transaction without insisting upon the performance of this particular condition.

Upon motion duly made and seconded, the following resolution was unanimously adopted:

RESOLVED that the condition requiring Michael M. Sokoll to obtain 350 additional licenses to operate taxicabs in the City of Chicago, Illinois, contained in the contract entered into between Michael M. Sokoll and Paul C. L'Amoreaux, acting on behalf of this Corporation, in connection with the reorganization of DeLuxe Motor Cab Co., be waived and the proper officers of this Corporation and of General Transportation Corporation are authorized, directed and empowered to close the transaction without the performance of this condition, and to take such action and to execute any and all proper papers that may be necessary or convenient in connection therewith.

* * *

The Chairman then stated that Mr. Paul C. L'Amoreaux, acting on behalf of this Corporation, had purchased at auction from the receiver all of the assets of the Yellow Cab Company of Minneapolis, under an order from the Court having jurisdiction, 120 cabs with licenses, concessions and approximately $20,000 of equipment for $16,305, and that title was taken to this property by means of a common law trust under the name of Minneapolis Cab & Baggage Company. He further stated that it was probable that a new ordinance limiting the number of licenses in Minneapolis would soon be passed and that he expected, in such an event, this operation could then be disposed of at a profit.

Upon motion duly made and seconded, the following resolutions were unanimously adopted:

RESOLVED that all action of Paul C. L'Amoreaux, Acting on behalf of this Corporation, in purchasing the taxicab operation in Minneapolis, as reported to this meeting, be and the same hereby is in all respects approved, and that the proper officers of this Corporation are authorized, directed and empowered to manage and dispose of the same as the President of this Corporation may deem advisable;

* * *

The Chairman then stated that it was proposed to
1939 lease on the sixth floor of 1775 Broadway, Borough of Manhatten, additional space to take care of the operations of The Transportation Management Corporation and its affiliated companies, and that he had arranged to have The Transportation Management Corporation lease said premises for a term of five years at an annual

rental of $14,500 and, in addition thereto, the landlord would assume the obligations of The Transportation Management Corporation under its present lease of the premises at 1776 Broadway. . . .

* * *

The Chairman then withdrew from the chair which was assumed by Mr. Miller, President of the Corporation. Mr. Miller then informed the meeting that on application of the Superintendent of Insurance an order for the liquidation of Equitable Casualty & Surety Company had been granted and that, under Article V of the Agreement dated September 5, 1930, between Checker Cab Manufacturing Corporation and Morris Markin and Paul C. L'Amoreaux, which had been assigned to this Corporation in connection with the acquisition by this Corporation of certain securities and all the capital stock of Motor Cab Transportation Company on October 1, 1930, Mr. Markin had agreed to purchase 4,105 shares of the stock of Equitable Casualty & Surety Company at $45 within thirty days upon the written request from Motor Cab Transportation Company; that is to say, from this Corporation, as successor of Motor Cab Transportation Company, in the event such an order was granted. He further stated that both he and the other officers of the Company considered it inadvisable, under the circumstances, to enforce the immediate payment of this obligation from Mr. Markin, and that after conferring with counsel for this Corporation and with Mr. Markin and with certain of the directors, a method of paying this obligation in installments had been suggested. Mr. Markin then addressed the meeting and stated that he waived the requirement for a written request from this Corporation, or any other company, and that he deemed himself obligated to purchase the stock. He suggested that the Board consider permitting him to pay, beginning February 1st, the purchase price for the stock in monthly installments of $5,000 each until the obligation has been satisfied and, in addition, he would pay such additional amounts as the officers might call for to replenish the joint loss fund of Equitable Casualty & Surety Company and M. C. T. Co., Inc. This he felt would permit him to extend the payments over a period of eighteen months to two years without depriving the Corporation of any of its rights in the matter.

Upon motion duly made and seconded, the following resolutions were adopted (Mr. Markin not voting):

Resolved that the offer of compromise with respect to the obligation of Mr. Markin to purchase 4,105 shares of

Equitable Casualty & Surety Company stock at $45 a share be accepted and the officers of this Corporation
1940 are directed not to enforce the claim of this Corporation against Mr. Morris Markin so long as he pays to this Corporation monthly beginning February 1, 1931, until the obligation is satisfied, the sum of $5,000 plus such additional sums as the officers may require to replenish the joint loss fund of Equitable Casualty & Surety Company and M. C. T. Co., Inc.; . . .

Gov't. Ex. No. 49. (April 1, 1932, Letter from Rank, VP of Parmelee, to Chicago Cab Company, with same letter to other companies designated—)

1 letter (Yellow Cab Company, Pitts.
(Pittsburgh Trans. Company
(Parmelee Motor Fuel Co.
(Transportation Adjustment Co.
Yellow Cab Co. Cleveland
Black & White & Yellow Cab Co.
Chicago Cab Company
Yellow Taxi Co. of Mpls.
The Parmelee Company

1 letter (Yellow Cab Company, Chic.
(Chicago Yellow Cab Co.
(Benzoline Motor Fuel Co.

April 1, 1932

Chicago Cab Company, 1221 South Morgan Street, Chicago, Illinois

Gentlemen: We are desirous of checking our records in connection with your company and ask that you kindly furnish us the following information:

Date of incorporation, State in which incorporated, Corporate address, names and titles of officers, names of directors

In order that our records may be correct, we ask that you kindly arrange to mail to this office, from time to time, notice of any change of officers or directors that may be made.

The receipt of this information at your convenience will be appreciated.

Yours very truly

Levin Rank, *Vice President*

Gov't Ex. No. 50. (April 9, 1932, Letter H. J. Masson, Asst. Treas., Chicago Cab Company, to T. M. C., Attention Rank A/P—)

This is in reply to your letter of April 1st.

Date of incorporation:	June 30th, 1930
State in which incorporated:	Delaware
Corporate address:	1221 S. Morgan St., Chicago, Ill.
Names and titles of officers:	M. Shapiro, President, J. C. Byrne, Vice Pres., G. V. Hanrahan, Sec'y & Treas., H. J. Masson, Ass't Sec'y & Treas.
Names of directors	M. Shapiro J. Sokoll J. C. Byrne, G. V. Hanrahan,

1941

Trusting this is the information you require, we are, . . .

Gov't. Ex. No. 51. (April 15, 1932, Letter H. J. Masson, Asst. Treas., Chicago Cab Company, to T. M. C., Attention E. F. Kram—)

April 15th, 1932 Transportation Management Corp., 1775 Broadway, New York City, N. Y. Att: Mr. E. F. Kram Gentlemen:- . . . We notice that you have the date incorporated, shown as July 8th, 1925. This was the old DeLuxe Motor Cab Company, which was taken over by the Chicago Cab Company, the latter being incorporated in the State of Deleware on June 30th, 1930. . . . Very truly yours, Chicago Cab Company HJM:CG s/ H. J. Masson H. J. Masson, Ass't. Treas.

Gov't. Ex. No. 52. (April 20, 1932, Letter from H. J. Masson, Asst. Treas., Chicago Cab Company, to T. M. C., Attention E. F. Kram—)

Yours of April 18th, is acknowledged. We wish to advise that the DeLuxe Motor Cab Company has been dissolved.

Gov't. Ex. No. 53. (June 30, 1932, Minutes of Executive Committee of Board of Directors of CCM—)

Present: Morris Markin, C. D. Hartmen, Jr.
being a majority of the Executive Committee and a quorum.

Mr. Markin called the meeting to order and acted as Chairman thereof, and Mr. C. D. Hartman, Jr. acted as Secretary of the meeting and kept the minutes thereof.

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The Chairman then stated that the Chicago Cab Company operating on a membership basis in the City of Chicago was indebted to this company on May 31st, 1932 in the sum of approximately $220,000. That this obligation is secured by 50 Model G and 6 Model K taxicabs; the balance of the security having been junked over a period of time since the original sale of the cabs. That the membership of the Chicago Cab Company due to the substantial reduction in cab revenue, had been substantially reduced and that there were now operating only 244 cabs, 180 of which were second hand converted foreign cars. That the company is now operating at a loss and will need additional working capital to continue. That one-half of the capital stock of the Chicago Cab Company is controlled by Parmelee Transportation Company but that Parmelee Transportation Company is unable to furnish it with the necessary additional working capital and that the company will shortly be required to suspend.

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He further stated that in the event this Corporation forces its rights against said equipment that little, if anything, could be realized from a sale thereof and that it was to the best interests of this corporation to permit the transfer of said equipment to the Checker Taxi Company in Chicago by such members of the said Chicago Cab Company as desire to join the Checker Taxi Company fleet. By which action the cabs would be continued in operation and some money could be obtained upon the notes secured by the specific cabs transferred; that to permit such transfer would also assist in preventing interests hostile to this corporation from obtaining a competitive position in Chicago.

Upon motion duly made and seconded, the following resolutions were unanimously adopted:

RESOLVED that, in lieu of enforcing the rights of this Corporation against the taxicabs operated in the organization of Chicago Cab Company, the President or any Vice President of this Corporation is authorized to permit the transfer of such taxicabs with such members as may desire to continue to operate the same to the organization of Checker Taxi Company in Chicago.

FURTHER RESOLVED that the proper officers and agents of this Corporation are authorized, directed and empowered to take such action as may be necessary or convenient to carry into effect the intent of the foregoing resolutions.

Gov't. Ex. No. 54. (1932 Minutes of Directors Meeting of Cab Sales—)

On vote duly taken, T. L. Winslow was duly and unanimously elected Vice President and Director of this corporation, to hold office as such for the unexpired portion of the term of A. C. Flynn, resigned, and until his successor shall be duly elected and qualified.

Whereupon, the President presented to the meeting certain correspondence that had passed between this corporation and the Checker Taxi Company, with relation to the acquisition by Checker Taxi Company of certain of the driver personnel and cab equipment of the Chicago Cab Company, and asked the approval of this Board of his acts as officer of the corporation, in respect thereof. The correspondence presented is in words and figures as follows, to-wit:

"July 19th, 1932

Checker Taxi Company, Chicago, Illinois.

Gentlemen:

We have recently acquired and are now the owners of certain of the stock of Chicago Cab Company, operating at this time approximately 250 cabs in the City of Chicago.

1943 Because of present business conditions, it is desirable that operations of that company be suspended for an undetermined period, provided we can arrange with you to take over our driver personnel with cab equipment on certain terms and conditions, and we therefore propose to you the following:

1. We will cause the Chicago Cab Company to reconvey their cab equipment to their drivers and to release the drivers from their written contracts with that company and to enter into contracts with you on your usual and customary terms, except that you to take them into your organization without charge for initiation fees or collateral, bond deposits or the like.

2. Certain cabs that would be brought into your fleet by drivers of Chicago Cab Company are subject to chattel mortgages belonging to the Checker Cab Manufacturing Corporation of Kalamazoo, Michigan, and as to such cabs conveyed to you, you are to make the collection on the mortgages referred to in accordance with their terms, without charge, and deliver the proceeds, when, as and if collected, to the Checker Cab Manufacturing Corporation. (A list of the cabs and mortgage obligations thereon are hereto attached.)

3. We will cause the Chicago Cab Company to release its contracts with concessionaires in the City of Chicago to make available to you such concessions, and we agree to aid you in procuring concession contracts with the Stevens Hotel and the LaSalle Hotel, at a cost to you of not to exceed one-half the amount now being paid by the Chicago Cab Company, and in the event you fail to procure said concessions, this agreement shall at your option become null and void.

4. We will cause the Chicago Cab Company at your request to transfer to you all of the telephone orders for cab service received by it from time to time hereafter during the period of this agreement.

5. We will procure for you the consent of the Checker Cab Manufacturing Corporation of Kalamazoo, Michigan, to release you from the terms of your contract with them, of date February 5th, 1930, so that you may take into your organization equipment other than cabs manufactured by Checker Cab Manufacturing Corporation, now in the fleet of the Chicago Cab Company.

6. Approximately 50% of the fleet of Chicago Cab Company is being operated double shift, so that the total additional revenue that would accrue to you by reason of this acquisition would approximate $195,000. per annum, being 250 cabs at an average charge of $65.00 per cab per month. You can handle this additional business without added expense of operation except as to your insurance cost of $25.00 per month per cab, leaving you a net profit of $40.00 per month per cab, or approximately $100,000.00 per annum.

1944 You are to pay us, therefore, in the event you accept this proposal, $20.00 per month per cab for each cab now operating in the Chicago Cab Company fleet conveyed to you, for a period of five (5) years from and after the date of such conveyance.

7. We are to have a first right and option, expiring July 19th, 1933, to cause Chicago Cab Company to resume operations and to cancel this agreement, in which event you will at our request release any of the Chicago Cab drivers taken into your organization who may then be in good standing with you and elect to sever their contract relations with you, and likewise will reconvey to such drivers their cab equipment. We are, nevertheless, to receive all monies due us hereunder to the date of cancellation of such driver's contracts.

8. You are to have a first right and option at any time during the period of this agreement after July 19th, 1933, to pay us $100,000.00 in cash, and be relieved and discharged of any continuing obligations to us for the balance of the period of this agreement.

We will appreciate your immediate consideration of this proposal.

Respectfully yours,

CAB SALES AND PARTS CORPORATION
By PAUL C. L'AMOREAUX,
President"

"July 19th, 1932

Cab Sales and Parts Corporation,
Chicago, Illinois.

Gentlemen:

We acknowledge receipt of your proposal in connection with the acquisition by us of certain driver personnel and cab equipment now operating in the fleet of the Chicago Cab Company

We accept your proposal in its entirety as set forth in your letter to us on that subject of even date herewith, except as to the following:

1. In view of the fact that we do not know how long many of the cabs, now operating in the Chicago Cab Company, would in the event of their acquisition by us remain in our fleet, we are unwilling to pay you the amount you request, except as said cabs or the replacements thereof operated by the same drivers, may remain with us.

2. Because of present business conditions, we are likewise uncertain that the storage and other charges that will accrue against these men, pursuant to our usual driver's contracts, will be paid. We are, therefore, unwilling to pay you the amount that you ask unless and until we actually receive payment from such drivers. We will agree, however, to pay you one-half of all the sums of money we collect from drivers
1044A operating the cabs conveyed to us pursuant to your proposal, in excess of $25.00 per cab per month, and will pay you said amount monthly as collected by us.

Yours very truly,

CHECKER TAXI COMPANY
By M. M. SOKOLS, *President*"

"July 19th, 1932

Checker Taxi Company, Chicago, Illinois

Gentlemen:

We acknowledge receipt of your communication of even date, following our proposal of like date to you in connection with the acquisition by you of certain driver personnel and cab equipment of the Chicago Cab Company, and herewith advise you that we accept the amendments and changes in our original proposal, as set forth in said communication to us.

Inasmuch as action is immediately advisable, we request that you have your directors approve and ratify your acceptance of our proposal as amended by you, at the earliest opportunity.

Respectfully yours,

CAB SALES AND PARTS CORPORATION

By PAUL C. L'AMOREAUX, *President*"

Whereupon, the following resolution was duly and unanimously adopted:

RESOLVED: That the acts of Paul C. L'Amoreaux, President of this corporation, as set forth in the correspondence, presented at this meeting, to the Checker Taxi Company be and the same is hereby approved and adopted as the acts of the Cab Sales and Parts Corporation. . . .

Gov't. Ex. No. 55. (July 19, 1932, Minutes of Director's Meeting of Checker—)

Present: L. A. Stebbins, A. C. Flynn, M. M. Sokoll

M. M. Sokoll, the President, called the meeting to order and A. C. Flynn, the Secretary, recorded the minutes thereof.

Whereupon, the President stated to the meeting that he had received on July 19th, 1932, a communication from the Cab Sales and Parts Corporation, in connection with the acquisition by this company of certain of the driver personnel and cab equipment of the Chicago Cab Company, which he read to the meeting. . . .

• • •

The President then stated that he considered it very desirable for the company to acquire such equipment and driver personnel, as it would increase the gross revenue of the company approximately twenty-five percent (25%), and

the only added expense the company would have would be the insurance cost on the cabs acquired and, as
1945 stated in the communication, the net profits to the company would be approximately $100,000.00 a year; provided the cabs acquired remained in the fleet. He thereupon recommended acceptance of the proposal, provided payment could be made to Cab Sales and Parts Corporation only in the event the cabs remained in the company and the storage and other charge actually collected from the drivers.

Considerable discussion followed, and the following resolution was thereupon duly and unanimously adopted:

RESOLVED: That the offer of Cab Sales and Parts Corporation to cause certain of the driver personnel of the Chicago Cab Company to enter into driver's contracts with this corporation, and to cause certain cab equipment now owned by the Chicago Cab Company, to be ultimately conveyed to this corporation on terms and conditions particularly set forth in the proposal of Cab Sales and Parts Corporation presented to this meeting, be and the same is hereby accepted and approved in all respects, subject only to the payment by this company to Cab Sales and Parts Corporation of any moneys that may become due it thereunder, when, as and if collected by the Checker Taxi Company, . . .

Gov't. Ex. No. 56. (Plaintiff's Interrogatory No. 18—)

To Parmelee, Markin, Cab Sales and Checker (in so far as each has knowledge). With respect to your denials of the allegations of paragraph 28 of the amended complaint, state:

(a) Whether Chicago Cab Company was incorporated about June 30, 1930;

(b) The date of each acquisition by you, and your wholly owned subsidiaries, directly and indirectly, of capital stock of Chicago Cab Company, the amount of stock acquired by each acquisition, the name of the seller, and the consideration paid;

(c) The date of each sale, and other disposition, by you, and your wholly owned subsidiaries, directly and indirectly, of capital stock of Chicago Cab Company, the amount of stock involved in each transaction, the name of the buyer, and the consideration received;

(d) Whether Chicago Cab Company suspended operations about July 22, 1932;

(e) Whether the assets of the Chicago Cab Company were acquired by Checker, whether directly or indirectly, after July 1932;

(f) Whether a substantial number of the Chicago Cab Company drivers entered into contracts with Checker in 1932 after Chicago Cab Company suspended operations.

Gov't. Ex. No. 57. (Parmelee's Answer to Plaintiff's Interrogatory No. 18—)

(a) Chicago Cab Company was incorporated in Delaware on May 31, 1930.

1946 (b) General Transportation Corporation acquired 1,000 shares of Chicago Cab Company about June 1930 in consideration of the assets of DeLuxe Cab.

(c) No sale of stock of Chicago Cab Company occurred.

(d), (e) and (f) Parmelee Transportation Company has no knowledge of the answers to these subsections.

Gov't Ex. No. 58. (Cab Sales Answer to Plaintiff's Interrogatory No. 18—)

(d) Yes (e) No (f) Yes.

Gov't. Ex. No. 59. (Checker's Answer to Plaintiff's Interrogatory No. 18—)

(d) Yes (e) No (f) Yes.

Gov't. Ex. No. 60. (August 13, 1930, Minutes of Directors Meeting of C. C. M.—)

The meeting reconvened pursuant to adjournment.

Present: Messrs. Morris Markin, Ralph E. Oakland, L. G. Miller, Albert F. Jaeckel, Jack Polansky, Henry Weiss

being a majority of the Board of Directors and a quorum.

Mr. Markin, President of the Corporation, called the meeting to order and acted as Chairman thereof. Mr. Oakland, Secretary of the Corporation, acted as Secretary of the meeting and kept the minutes thereof.

* * *

The Treasurer then presented to the meeting a copy of the balance sheet of the Corporation at the close of business on June 30, 1930, which showed an earned surplus of over $4,205,000. He further stated that the net earnings of this Corporation for the six months period ending June 30, 1930, after taxes, depreciation and all other proper accounting charges amounted to $500,074.62. . . .

* * *

The Chairman then stated to the meeting that, acting on behalf of this Corporation, he had received from J. A. Sisto & Co. an assignment of the rights of J. A. Sisto & Co. under an agreement dated October 29, 1929, by and between Parmelee Transportation Company, a Delaware corporation, Metropolitan Distributors Company of Pittsburgh, a
1947 Delaware corporation and J. J. Sisto & Co. He then presented to the Corporation an assignment of the rights which he had obtained under said contract by the assignment to him from J. A. Sisto & Co.

Upon motion duly made and seconded, the following resolutions were adopted (Mr. Markin not voting):

RESOLVED that the form and provisions of the assignment to this Corporation from Morris Markin of his rights under an agreement dated October 29, 1929, between Parmelee Transportation Company, a Delaware corporation, Metropolitan Distributors Company of Pittsburgh, a Delaware corporation and J. A. Sisto & Co. be and they hereby are in all respects approved and accepted;

* * *

The Chairman then stated that he had an option to purchase 25,000 shares of the Common Stock of Parmelee Transportation Company, a Delaware corporation, at approximately $29.28 per share at any time prior to April 1, 1934, which was granted to him under an agreement dated April 29, 1929, between Parmelee Transportation Company and himself. He further stated that he desired to vest in this Corporation all of his rights under said option and under said agreement without cost to this Corporation, and he presented to this meeting a form of agreement to effect such purpose.

Upon motion duly made and seconded, the following resolutions were adopted (Mr. Markin not voting):

RESOLVED that the form of agreement to be executed by Mr. Morris Markin vesting in this Corporation for a nominal consideration all his rights under the option to him granted by Parmelee Transportation Company in the agreement between Parmelee Transportation Company and Morris Markin dated April 29, 1929, to purchase 25,000 shares without par value of the Common Stock of said company at any time on or prior to April 1, 1934, at the price of about $29.28 per share, be and the same hereby is approved, and any Vice-President of this Corporation is authorized, directed and empowered to execute an agreement in substantially said form for such pur-

pose when the same has been approved by counsel for this Corporation;

FURTHER RESOLVED that the acquisition of said rights from Mr. Morris Markin under said agreement dated April 29, 1929, be and the same hereby is approved and accepted;

* * *

The Chairman then stated that certain of the officers of this Corporation had been negotiating with him and his associates as the controlling stockholders in Motor Cab Transportation Company for the sale of all of the capital stock of the said company to this Corporation on the basis of approximately net tangible book value for said stock as shown by the balance sheet of said company as at June 30, 1930, to be certified by the accountants for this Corporation, 1948 to be payable in Common Stock of this Corporation at $25 per share, and that the Corporation, in connection with this transaction, would also acquire on the same basis all of the capital stock of Alpha Brokerage Company. He further stated that Motor Cab Transportation Company operated, through its subsidiaries, about 2,050 taxicabs in the City of New York, all of which were Checker cabs except 250 which were Saf-T-Cabs; and that it owed this Corporation about $2,000,000 for the purchased of cabs and an open account.

Mr. Oakland then stated that he wished authority to continue negotiations with the stockholders of Motor Cab Transportation Company in order that a firm contract with respect to such acquisition might be prepared.

Upon motion duly made and seconded, the following resolutions were adopted (Mr. Markin not voting):

RESOLVED that Mr. Ralph E. Oakland, Vice-President and Treasurer of this Corporation be and he hereby is authorized and empowered to negotiate a suitable purchase contract for the acquisition by this Corporation of all of the outstanding capital stock of Motor Cab Transportation Company, a Delaware corporation, and of Alpha Brokerage Company; on the basis of the issuance of the Common Stock without par value of this Corporation at $25 per share to the stockholders of said companies for their shares at approximately net tangible book value thereof as shown on the consolidated balance sheet, to be certified to by the accountants of this Corporation as of June 30, 1930, the determination of such book value and the method of such determination to be such as shall be approved by the Treasurer;

Gov't. Ex. No. 61. (September 9, 1930, Minutes of Directors Meeting—)

Present: Messrs. Miller, Higgins, Hoen, Moffat, Haveron.

Mr. Miller acted as Chairman, and Mr. Rank, the Secretary of the Company, being present, acted as Secretary of the meeting.

The Secretary presented the resignation of Mr. Harrigan, and on motion duly made, seconded and carried, such resignation was accepted. A vote being duly had, it was found that Mr. Rank had been duly elected as a director in place of Mr. Harrigan to serve for the balance of Mr. Harrigan's term.

Mr. Hoen thereupon presented his resignation, and on motion duly made, seconded and carried, such resignation was accepted. A vote being duly had, it was found that Mr. McMahon had been duly elected as a director in place of Mr. Hoen to serve for the balance of Mr. Hoen's term.

1949 Mr. Hoen thereupon left the meeting, and Mr. McMahon being present, participated in the subsequent deliberations of the Board.

Mr. Miller stated that negotiations had been pending between the officers of this company and the officers of Checker Cab Manufacturing Corporation, looking towards a closer affiliation of these two companies, and that the matter had been discussed with virtually all the members of this Board; that Checker Cab Manufacturing Corporation had recently entered into a contract for the acquisition of all of the outstanding stock of Motor Cab Transportation Company, which through subsidiary companies operates the largest fleet of taxicabs in the City of New York, consisting of 2,050 cabs; and that Checker Cab Manufacturing Corporation was prepared to turn over to this company the stock of Motor Cab Transportation Company, together with $1,442,000 face amount of debentures and $1,000,000 of preferred stock and warrants and options for over 118,000 shares of common stock of this company, in exchange for shares of common stock of this company. Mr. Miller further stated that the acceptance of the proposal would have not only the highly desired effect of retiring over $2,440,000 of senior securities of this company, with the consequent saving of prior fixed charges, but would, in his opinion, have the effect of putting this company in the dominant position in the City of New York in the taxicab operating business; that there was every hope that the report of the Mayor's Committee would afford relief to the taxicab industry and enable it to be operated

on a sounder and more profitable basis; that through the joint operation of the two largest fleets in the City of New York many immediate economies could be put into effect, and that substantial additional economies should in no time result in a substantial increase in the company's earnings.

The President thereupon presented and read to the meeting an offer from Checker Cab Manufacturing Corporation addressed to this company. He also submitted a written report, signed by him, recommending the acceptance of the offer. He further presented a written report made by Mr. E. S. Higgins, Vice President of this Company, and a written report by Mr. J. F. McMahon, a member of this Board and one of the company's chief operating experts. He pointed out also that in view of the present financial condition of this company it was highly desirable that it should be able to obtain additional working capital when needed in the carrying out of its future expansion program in the City of New York and elsewhere, and that he felt that this should be assured through the affiliation with Checker Cab Manufacturing Corporation.

The meeting thereupon proceeded to a discussion of the offer and the proposal of Checker Cab Manufacturing Corporation. Mr. Haveron stated that while he was in favor of the proposal, he wished to withdraw from the meeting, in view of the fact that he was also a director of Checker Cab Manufacturing Corporation. Mr. Haveron thereupon withdrew from the meeting.

1950 Upon motion duly made and seconded, the following resolutions were unanimously adopted:

RESOLVED that the offer of Checker Cab Manufacturing Corporation, dated September 9, 1930, to transfer and deliver to this Corporation the following securities:

(1) $1,442,000 face amount of 6% Sinking Fund Convertible Debentures of this Corporation;

(2) $1,000,000 par value of 6% Convertible Preferred Stock of this Corporation;

(3) Warrants and/or options for the purchase of 118,425 shares of Common Stock of this Corporation;

(4) 500 shares of Preferred Stock and 375,500 shares of Common Stock (being all of the outstanding stock) of Motor Cab Transportation Company.

in consideration of the issue of this Corporation of 422,787 shares of its Common Stock to or upon the order of Checker Cab Manufacturing Corporation, be and the same hereby is accepted;

FURTHER RESOLVED that this Corporation issue to or upon the order of Checker Cab Manufacturing Corporation 422,787 full paid and non-assessable shares of Common Stock of this Corporation;

FURTHER RESOLVED that the officers of this Corporation are hereby authorized to deliver to Checker Cab Manufacturing Corporation a written acceptance of the above mentioned offer; to issue and deliver certificates for the 422,787 shares of Common Stock of this Corporation as called for therein; and to take any other action necessary or convenient to carry into effect the transaction contemplated by said offer;

FURTHER RESOLVED that if and when the $1,442,000 face amount of debentures of this Corporation be acquired, in accordance with the foregoing, such debentures shall not be result, reissued, pledged or otherwise disposed of in any manner other than for tender to the sinking fund provided for in the debenture agreement.

Gov't. Ex. No. 62. (September 6, 1930, Notice from Rank, Secy. of Parmelee, of Special Meeting of Directors, and Attached Thereto Being Letter Agreement from Markin, C. C. M., to Parmelee, and Agreement dated September 5, 1930, Between C. C. M., Markin and L'Amoreaux—)

PARMELEE TRANSPORTATION COMPANY Notice of Special Meeting of the Board of Directors

September 6, 1930.

YOU ARE HEREBY NOTIFIED that a Special Meeting of the Board of Directors of Parmelee Transportation Company, a Delaware corporation, will be held at Room 1432, 1951 165 Broadway, Borough of Manhattan, City, County and State of New York, on Tuesday, September 9, 1930 at 2:30 o'clock P. M. (New York Daylight Saving Time) for the purpose of authorizing the issuance of Common Stock of Parmelee Transportation Company in exchange for senior securities and common stock purchase warrants of Parmelee Transportation Company and/or all of the capital stock of Motor Cab Transportation Company, a Delaware corporation, and of deciding on any other matters that may properly come before the meeting.

LEVIN RANK, *Secretary*

Checker Cab Manufacturing Corporation
Kalamazoo, Michigan.

September 9, 1939

Parmelee Transportation Company,
Dover, Delaware.

Dear Sirs:

The undersig ed corporation has entered into an agreement dated September 5, 1930, with Morris Markin and Paul C. L'Amoreaux, on behalf of themselves and their associates, relating to the acquisition by the undersigned corporation of all of the outstanding stock of Motor Cab Transportation Company, a Delaware corporation. A copy of this agreement is annexed hereto as Schedule A.

The undersigned corporation is the owner of $1,442,000 of 6% Sinking Fund Convertible Gold Debentures and $1,000,000 par value of 6% Convertible Preferred Stock of your corporation, and owns or controls warrants and options evidencing the right up to April 1st, 1934, to purchase in the aggregate 118,425 shares of Common Stock of your corporation at approximately $29. per share.

Subject to the performance of the conditions on our part to be performed, and subject to the performance to our satisfaction of the conditions precedent to our obligations under the above mentioned agreement, dated September 5, 1930, we hereby offer to transfer and deliver to your corporation, or cause to be transferred and delivered to your corporation, the following securities in consideration of and in exchange for the issuance by your corporation to us of 422,787 full paid and non-assessable shares of Common Stock of your corporation:

(1) 375,500 shares of common stock and 500 shares of preferred stock (which will then constitute all of the outstanding stock) of Motor Cab Transportation Company.

(2) $1,442,000 principal amount of 6% Sinking Fund Convertible Gold Debentures of your corporation.

(3) 1,000,000 par value of 6% Convertible Preferred Stock of your corporation.

(4) Warrants and options expiring April 1, 1934, and representing in the aggregate the right to purchase 118,425 shares of Common Stock of your corporation.

Delivery of the above mentioned securities by us to you and the issuance and delivery of the 422,787 shares
1952 of your Common Stock to us shall be made at the time and place determined as provided in the above mentioned agreement dated September 5, 1930, of which time

and place at least five days' prior notice will be given to you by us, for the acquisition by us of all of the outstanding stock of Motor Cab Transportation Company.

It is understood that the foregoing offer on our part is subject to the following conditions:

(1) That the 422,787 shares of your Common Stock shall be duly authorized for listing on the New York Stock Exchange, subject only to official notice of issuance, not later than October 15, 1930.

(2) That you shall have procured the cancellation, on or before April 1, 1934, without cost to your corporation, of the option for the purchase of 25,000 shares of Common Stock of your corporation now held by Mr. Ernest H. Miller.

(3) That our counsel shall have approved all proceedings relating to the issue and delivery of the 422,787 shares of Common Stock of your corporation as full paid and non-assessable, and all other proceedings relating to the carrying out of the transaction as contemplated by this agreement.

(4) That at or about the time the transaction is consummated, you will by resolution of your Board of Directors provide that the Debentures acquired of us will not be reissued, sold, pledged, or otherwise disposed of except that they may be used for tender to the Sinking Fund.

Your obligations, in the event that you accept this offer shall be subject to the conditions that your counsel shall have approved all the proceedings relating to the acquisition by your corporation of the securities above mentioned to be transferred to your corporation, and shall have rendered their opinion to you that the stock of Motor Cab Transportation Company proposed to be transferred to you is validly issued as full paid and non-assessable.

In the event that your corporation desires to accept this offer, kindly sign and return to our corporation the carbon of this letter in order that the same may constitute a contract between us.

Very truly yours,

CHECKER CAB MANUFACTURING CORPORATION

By (Sgd.) M. MARKIN

President

(Seal)

Attest:
(Sgd.) RALPH C. FAILING
Asst. Secretary

The foregoing offer is hereby accepted.

PARMELEE TRANSPORTATION COMPANY
By (Sgd.) E. H. MILLER
President

(Seal)

Attest:
(Sgd.) LEVIN RANK, *Sec'y*

1953 AGREEMENT made this 5th day of September, 1930, by and between Checker Cab Manufacturing Corporation of Jersey City, New Jersey, a New Jersey corporation, party of the first part (hereinafter called the "Corporation") and Morris Markin and Paul C. L'Amoreaux, of the City of New York, New York, acting for themselves and their associates, parties of the second part (hereinafter called the "Vendors").

WITNESSETH: (1) The Vendors make the following representations:

(a) Motor Cab Transportation Company (hereinafter called "Motor Cab"), is a corporation duly organized and legally existing under the laws of the State of Delaware having an authorized capital stock of 100,000 shares of the par value of $100 each of callable non-voting Preferred Stock of which 500 shares are outstanding and 750,000 shares without par value of Common Stock of which 375,500 are outstanding. All of said shares of Preferred Stock and all of said shares of Common Stock have been duly and validly issued and are fully paid and non-assessable and the Vendors own a substantial amount of the said stock and with their associates control all of the outstanding stock. No default in dividends or with respect to any of the provisions of the Preferred Stock exists at the date hereof.

(b) Motor Cab is engaged in the business of operating through subsidiaries approximately 2,050 taxicabs in the City of New York and elsewhere under the name of The Motor Cab Transportation System, and its subsidiaries have complied with all state and municipal statutes and ordinances in connection with their operations and are duly authorized and licensed to operate at least 2,050 taxicabs under the ordinances of the City of New York and the laws of the State of New York; and the subsidi-

aries of Motor Cab have valid title to said cabs subject only to conditional sales contracts in the usual form securing the payment of the balance of the purchase price of said cabs. Neither Motor Cab nor any of its subsidiaries own any trade marks, patents or applications for letters patent or trade marks, or real estate except the real estate described in Schedule C. The subsidiaries of Motor Cab have good and valid leases to the properties set forth in Schedule A annexed hereto and made a part hereof for the respective terms and at the respective annual rentals set forth in said Schedule A. Motor Cab owns all of the outstanding capital stock of the subsidiary companies listed in Schedule B annexed hereto and made a part hereof. Said subsidiaries are all corporations duly organized and legally existing under the laws of the State of New York, having the authorized capital stocks set forth in said Schedule B. All shares of the capital stock of said subsidiaries have been duly and validly issued and are full paid and non-assessable, and Motor Cab has good and valid title to the same.

1954 (c) Annexed hereto and made a part hereof as Schedule C is a true and correct copy of the consolidated balance sheet of Motor Cab and of its subsidiaries as of June 30, 1930; as certified by Messrs. R. E. Niederwiesen Co., certified public accountants . . . The gross value at which cabs are carried on Schedule C represents the valuation of such assets at which stock was issued by the subsidiaries of Motor Cab. Said cabs consist of 1,800 Model K Checker Cabs and 200 Saf T-Cabs purchased by subsidiaries of Motor Cab and/or their predecessors (new) on the dates specified in Schedule C1 hereto annexed. The valuation carried on Schedule C for inventories, deposits, stock of Equitable Casualty & Surety Co. and fixed assets (except cabs) are at cost to Motor Cab and/or its subsidiaries less depreciation as indicated thereon . . .

• • •

NOW, THEREFORE, in consideration of the mutual promises herein contained, and of the sum of Ten dollars ($10) by each of the parties hereto to the other in hand paid, receipt whereof is hereby acknowledged, the parties hereto agree as follows:

I. Subject to the conditions hereinafter provided, the Vendors agree to transfer and deliver to the Corporation all of the outstanding stock, both common and preferred, of

Motor Cab in exchange for and in consideration of the issuance by the Corporation to or upon the order of the Vendors of 58,447 shares without nominal or par value of the capital stock of the Corporation; and the Corporation agrees to issue and deliver 58,447 shares of its capital stock to or upon the order of the Vendors in exchange for and in consideration of such transfer and delivery . . .

• • •

IX. Notwithstanding anything herein contained to the contrary, the Vendors agree that the Corporation may, at its option, by written notice to the Vendors, terminate this agreement without liability to the Vendors in the event that an injunction or other restraining order shall have been obtained against the consummation of any or all the transactions contemplated herein, or in the event that litigation of any sort has been brought or threat of litigation of any sort publicly made and reported in any newspaper published in the City of New York, New York, affecting the Corporation and/or the Vendors with respect to the transactions contemplated herein.

• • •

XIII. All notices of the Corporation under this agreement shall be sufficiently given if delivered in person or sent by registered mail to Checker Cab Manufacturing Corporation, care of Chadbourne, Hunt, Jaeckel & Brown, 165 Broadway, New York City, New York, and any notice to the Vendors and/or to their associates shall be
1955 sufficiently given if delivered in person or sent by registered mail to Morris Markin, General Motors Building, 1775 Broadway, New York City, New York.

XIV. The Vendors agree with the Corporation and with each other that any action necessary or convenient to be taken by the Vendors under this agreement, or any extension of time or other modification of or under this agreement, may be made and executed by either Morris Markin or Paul C. L'Amoreaux on behalf of both of the Vendors, who hereby constitute each other their respective attorneys in fact for such purpose.

XV. This agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors, legal representatives and assigns, and the Corporation may assign or transfer any of its rights hereunder to any third party or parties, including Parmelee Transportation Company, a Delaware corporation, or any of the affiliated or subsidiary Corporation of Parmelee Transportation Company.

IN WITNESS WHEREOF, Checker Cab Manufacturing Corporation has caused this agreement to be executed by one of its Vice-Presidents pursuant to authority to him granted by its Board of Directors, and the Vendors have duly executed this agreement, in several counterparts, as of the day and year first above written.

CHECKER CAB MANUFACTURING CORPORATION
By
(sgd.) R. E. OAKLAND
Vice-President

(sgd.) MORRIS MARKIN (L.S.)
Morris Markin

(sgd.) PAUL C. L'AMOREAUX (L.S.)
Paul C. L'Amoreaux

Gov't Ex. No. 63. (Schedules, Letters, and Reports attached to and a Part of the Foregoing Government Exhibit No. 62, and More Particularly of the September 5, 1930 Agreement Between C.C.M., Markin, and L'Amoreaux—)

SCHEDULE B

Subsidiary Companies of Motor Cab Transportation Company (Delaware):

Name	*Date Organized*	*Authorized Capital Stock*	*Par Value*
Black Beauty Cab Corporation	1/31/29	1,000	None
Hamilton Peters Operating Company, Inc.	1/10/30	100	None
J. & B. Garage Corp.	5/31/29	100	None
J. & W. Garage Corp.	7/30/29	100	None
Junius Garage Corp.	10/26/29	100	None
M.C.T. Co., Inc.	9/19/29	100	None

1956 (Continued)

Name	*Date Organized*	*Authorized Capital Stock*	*Par Value*
Motor Cab Transportation Co.	9/19/29	100	None
M. G. L. Garage Corp.	11/13/29	100	None
1 East 140th Street Corporation	1/30/30	100	None
One Story Garage Corp.	11/ 7/29	100	None

NOTE: All of the above corporations are incorporated under the laws of the State of New York; all of their authorized capital stocks are issued and are owned by Motor Cab Transportation Company (Delaware).

SCHEDULE C1

DATES OF PURCHASE OF TAXICABS

Checker Cabs Model K

Date	*Number of Cabs*
February or March, 1929 (Acquired by Motor Cab subsidiary October 15, 1929)	50
March 1, 1929	100
April 30, 1929	50
June 30, 1929	150
August 31, 1929	200
October 31, 1929	200
November 30, 1929	200
December 31, 1929	300
December 31, 1929	300
February 28, 1930	250
	1,800
Saf-T-Cabs	
March 31, 1930	250
	2,050

Schedule 3C (Continued)

William H. Peters and Samuel Hamilton Employment Contract

Contract with Hamilton-Peters Operating Co., Inc., dated February 10, 1930, extending for three years from that date. Joint compensation for Peters and Hamilton is $250 per week, while the corporation operates 250 cabs or less. This compensation increases $20.83 per week for each additional 50 cabs operated. There is also a bonus of 10% of the net profits of the corporation after deducting 7% on the invested capital and proper reserves for income taxes and obligations. This bonus is payable in cash or common stock of Motor Cab Transportation Company at the option of Hamilton-Peters Operating Co., Inc., at the book value of said stock as shown on the books of Motor Cab Transportation Company. This contract is guaranteed by Motor Cab Transportation Company, and
1957 Motor Cab Transportation Company also agrees to issue stock to cover the bonus therein provided for if required by Hamilton-Peters Operating Co., Inc.

September 9th, 1930.

Parmelee Transportation Company,
Dover, Delaware.

Dear Sirs:

In connection with the agreement bearing even date herewith between your corporation and the undersigned relating to the acquisition by your corporation of all of the outstanding stock of Motor Cab Transportation Company, and certain debentures, preferred stock and warrants of your corporation, The undersigned corporation has entered into a further agreement dated September 5, 1930, with Morris Markin and Paul C. L'Amoreaux, relating to the acquisition by the undersigned corporation of all of the outstanding stock of Alpha Brokerage Company and of Motor Cab Transportation Management Corporation. A true copy of this further agreement is annexed hereto as Schedule A.

(1) This will confirm our understanding that the undersigned corporation has agreed to sell to your corporation, and your corporation has agreed to purchase from the undersigned corporation for the sum of One Dollar ($1), all of the outstanding stock of Alpha Brokerage Company (a New York corporation), and of Motor Cab Transportation Management Corporation (a New York corporation). This agreement is contingent upon the consummation of the above mentioned agreement for the acquisition by your corporation of the stock of Motor Cab Transportation Company, etc., and the transfer and deliver of the stocks of said Alpha Brokerage Company and Motor Cab Transportation Management Corporation is to be made at the same time and place as the closing under said agreement.

(2) The performance of this agreement shall be a condition to your obligations under the above mentioned agreement between us relating to the acquisition by your corporation of the stock of Motor Cab Transportation Company, etc.

Very truly yours,

CHECKER CAB MANUFACTURING CORPORATION
By (Sgd.) RALPH E. OAKLAND (SEAL)
Vice President

The foregoing understanding is hereby confirmed, September 9, 1930.

PARMELEE TRANSPORTATION COMPANY
By (Sgd.) E. H. MILLER (SEAL)
Pres.

1958 New York, September 9, 1930

To the Directors of Parmelee Transportation Company:

After a thorough study and personal survey of the business of the Motor Cab Transportation Company, I desire to advise you to arrange for the purchase from the Checker Cab Manufacturing Corporation of the Motor Cab Transportation Company.

My survey of the plants resulted in finding them all excellently equipped, in very good physical condition, all of the cabs in operation and in general a very desirable outfit. However, my survey also disclosed that they are operating in an extremely expensive central repair shop on an overhead that is far out of line with that of Yellow and our accounting department in drawing a comparison of the cost per week of operation shows Motor Cab Transportation is $3.00 in excess of the cost per week of Yellow Taxi, labor only (not drivers).

With the possibility of the number of cabs in New York City being limited, it is extremely desirable to add to the Parmelee fleet by such a large number. Such an addition would not be possible for a matter of considerably over a year by the process of starting new outfits. As a matter of fact it would be physically impossible to add 2,000 cabs to the present fleet of Yellow and National within a year's time. At the same time by the unification of Claim Departments, Purchasing Departments and the increased purchasing power in one city, there will not only result considerable profit as a result of the unification but it will also be the means of saving a substantial sum on the operation of the cabs now operated by Parmelee in New York City.

The exchange of Parmelee stock for the $1,442,000. of Parmelee bonds now held by Checker Manufacturing Corporation and for the $1,000,000. of Parmelee Preferred Stock, I recommend to you to the fullest extent, as I feel it would be materially to the advantage of Parmelee Transportation Company to rid itself of as much of fixed charges from these obligations as is possible. It is also advisable to simplify its capital structure so that the common stockholders of Parmelee can be more directly interested in the assets and profits of Parmelee. To the end that this deal should be accomplished I feel so keenly the desirability of it that at this time I am offering to forego such advantages as there may be for the option of 25,000 shares which I now

possess and I am willing at this time to return this option to the company for cancellation.

Respectfully yours,

s/ E. H. Miller

1959

New York, September 9, 1930

Mr. E. H. Miller, President
Parmelee Transportation Company,
1776 Broadway,
New York City.

Dear Sir:

The acquisition of the Motor Cab Transportation Company by Parmelee offers advantages and the increase in the number of cabs operated under one management will result in substantial savings in operating costs and permit the expenditure for certain very necessary items of plant and personnel which small operations cannot undertake. The advantages to be gained by the acquisition are principally as follows—

The consolidation of Claims and Legal Departments will affect some economy but will allow the development of more efficient work along these lines.

Our experience shows that the consolidation of Purchasing will make a very substantial but indeterminate saving and should eventually secure for us recognition as a public utility with consequent preferential prices on major commodities.

The consolidation will probably permit of the development of combined street supervision at a minimum expense per cab and should result in improvement of driver personnel, increased earnings per mile and greater public confidence. This feature can give us considerable advantage over smaller operators who are unable because of the cost, to develop a city-wide street supervision.

A larger number of cabs will permit of the development and construction of more efficient and suitable plants for the housing and overhaul of rolling stock.

Experience proves that the increase in the number of cabs by building the necessary organization to care for same is a slow and expensive process. The Motor Cab Transportation Company is a going organization with a seasoned operating personnel and its acquisition will permit the advantages gained by a large fleet to be enjoyed almost immediately after acquisition whereas the expan-

sion of our present properties could hardly be done in less than twelve to eighteen months.

In addition to the above positive advantages but of indeterminate value, a survey which I made in July developed the fact that reduction in operating costs of about from two to three dollars per cab per week for the entire Motor Cab Transportation Operation could be anticipated. This would make a saving of between $175,000, and $350,000, per year in operating expenses.

In view of the above factors and the belief that a dominating position in the cab transportation field in New York is of very substantial value at this time, I would recommend the acquisition of Motor Cab Transportation Company on favorable terms.

1960

Very respectfully,

s/ E. S. Higgins

Gov't. Ex. No. 64. (September 25, 1930, Minutes of Stockholders Meeting of C.C.M.)

Mr. Ralph E. Oakland, Vice-President of the Corporation, in the absence of the President of the Corporation, called the meeting to order and acted as Chairman thereof, pursuant to the provisions of the By-Laws of the Corporation. Due to the inability of the Secretary of the Corporation to act as Secretary of the meeting, Mr. Albert F. Jaeckel was, upon motion duly made and seconded, appointed Secretary of the meeting, and kept the minutes thereof . . .

• • •

The Secretary then stated that stockholders holding 250,839 shares without nominal or par value of the Common Capital Stock of this Corporation out of the 375,000 shares without nominal or par value of the Common Capital Stock of this Corporation issued and outstanding at the close of business on September 12, 1930, were present in person or represented by proxy, and that a quorum of stockholders was therefore present either in person or represented by proxy at this meeting.

The Chairman then stated that one of the purposes of this meeting was to take action upon the proposition to ratify and approve the purchase by the Corporation of $1,442,000 face amount of 6% Sinking Fund Convertible Debentures due April 1, 1944, and 23,000 shares of Common Stock without par value of Parmelee Transportation Company and stock purchase warrants representing the

right to purchase 93,455 shares of Common Stock of said Company as described in the Vice-President's letter to stockholders dated September 12, 1930, which had been sent to all of the stockholders of the Corporation entitled to notice of and to vote at this meeting. He further stated that this purchase had been made from J. A. Sisto & Co. of New York City, and that Mr. F. L. Haveron, a director of this Corporation, was a partner in said firm.

• • •

The adoption of the following resolution was thereupon moved and seconded:

RESOLVED that the purchase by this Corporation of $1,442,000 face amount of 6% Sinking Fund Convertible Debentures due April 1, 1944, of 23,000 shares of Common Stock without par value and of stock purchase warrants representing the right to purchase 93,425 shares of Common Stock of Parmelee Transportation Company, a Delaware corporation, from J. A. Sisto
1961 & Co. at 70% of the principal amount thereof plus accrued interest with respect to said Debentures and at $10 per share with respect to said Common Stock, and at $18,712.50 with respect to all of said stock purchase warrants, be and the same hereby is in all respects ratified and approved.

The stockholders present in person or represented by proxy thereupon voted by ballot for and against the proposed resolution and, after the vote by ballot had been duly taken, the Secretary announced that 250,839 shares had voted in favor of the adoption of said resolution and that no shares had voted against the adoption of said resolution . . .

The Chairman then stated that a further purpose of this meeting was to consider and take action upon the proposition to authorize and approve the acquisition of all the capital stock of Motor Cab Transportation Company, a Delaware corporation, in exchange for the issuance of 58,447 shares of Common Stock of this Corporation. He then laid before the meeting the contract which had been entered into by Morris Markin and Paul C. L'Amoreaux and this Corporation relating to the acquisition of the capital stock of said Company. He further stated that Mr. Markin, President of this Corporation, was the controlling stockholder of Motor Cab Transportation Company.

The adoption of the following resolutions was thereupon moved and seconded:

RESOLVED that the acquisition of all of the outstanding stock of Motor Cab Transportation Company, a Delaware corporation, in exchange for the issuance by this Corporation of 36,447 shares of its Common Stock, is hereby authorized and approved;

FURTHER RESOLVED that the agreement dated September 3, 1930, between this Corporation and Morris Markin and Paul C. L'Amoreaux is hereby ratified, confirmed and approved;

FURTHER RESOLVED that the Board of Directors of this Corporation are hereby authorized to make such amendments in said agreement not materially altering the substance thereof as may seem to them advisable in their absolute discretion;

FURTHER RESOLVED that the Board of Directors and the officers of this Corporation are hereby authorized to take all action necessary or convenient to consummate the acquisition of all of the outstanding stock of Motor Cab Transportation Company in accordance with the intent of the foregoing resolutions.

The stockholders present in person or represented by proxy thereupon voted by ballot for and against the proposed resolutions, and, after the vote by ballot had 1962 been duly taken, the Secretary announced that 250,839 shares had voted in favor of the adoption of said resolutions and that no shares had voted against the adoption of said resolutions . . .

• • •

The Chairman then outlined to the meeting the plans for the acquisition of a substantial interest in Parmelee Transportation Company, a Delaware corporation, which was summarized in his letter to stockholders, dated September 12, 1930, and he laid before the meeting a copy of the contract which had been executed by this Corporation and Parmelee Transportation Company which provided for the transfer to Parmelee Transportation Company of $1,442,000 face amount of 6% Sinking Fund Convertible Debentures of Parmelee Transportation Company, $1,000,000 par value of 6% Cumulative Convertible Preferred Stock of said Company, warrants and options expiring on April 1, 1934 and representing in the aggregate the right to purchase 118,425 shares of the Common Stock of said Company, and all of the issued and outstanding capital stock of Motor Cab Transportation Company, in consideration of the issuance to this Corporation of 422,787

shares without par value of the common stock of said Company. He then pointed out to the stockholders that Mr. F. L. Haveron, a director of this Corporation, was a director of Parmelee Transportation Company.

The adoption of the following resolution was thereupon moved and seconded:

RESOLVED that the acquisition of a controlling interest in Parmelee Transportation Company, a Delaware corporation, outlined in the agreement dated September 9, 1930, between this Corporation and Parmelee Transportation Company (which is hereby in all respects approved), and the plans outlined in the letter from Ralph R. Oakland, Vice-President of this Corporation, dated September 12, 1930, be and the same hereby are in all respects approved, ratified, confirmed and adopted; and the officers, directors and agents of this Corporation be and they hereby are authorized and empowered to take any and all action that may be necessary or convenient to consummate the performance of said agreement on behalf of this Corporation and to carry into effect said plans with such modifications thereof not materially altering the substance thereof as the Board of Directors of this Corporation may, in its absolute discretion, approve.

The stockholders present in person or represented by proxy thereupon voted by ballot for and against the proposed resolution and, after the vote by ballot had been duly taken, the Secretary announced that 250,839 shares had voted in favor of the adoption of said resolution and that no shares had voted against the adoption of said resolution . . .

1963 *Gov't Ex. No. 65. (October 1, 1930, Minutes of Directors Meeting of Parmelee—)*

PRESENT: Messrs. Miller, Higgins, Moffat, Rank, McMahon, Haveron.

Mr. Miller called the meeting to order and acted as Chairman, and Mr. Rank, the Secretary of the Company, being present, acted as Secretary of the meeting.

* * *

The Chairman then submitted to the meeting an agreement between this Corporation and Checker Cab Manufacturing Corporation, dated September 29, 1930, provided for the modification of the agreement between this Corporation and Checker Cab Manufacturing Corporation, dated September 9, 1930, to the effect that the authorized and outstanding number of shares of stock of Motor Cab

Transportation Company to be acquired by this Corporation shall be reduced.

On motion duly made and seconded, it was unanimously

RESOLVED that the execution of the agreement, dated September 29, 1930, between this Corporation and Checker Cab Manufacturing Corporation, submitted to this meeting, be and the same hereby is ratified, confirmed and approved.

* * *

The Chairman then pointed out that under the agreement dated September 9, 1930, with Checker Cab Manufacturing Corporation, one of the conditions to the obligations of said corporation was the cancellation of his own option agreement with this Corporation covering 25,000 shares of Comman Stock. He thereupon submitted to the meeting the proposed form of agreement with this Corporation, to be executed, at the time of closing with Checker Cab Manufacturing Corporation.

The following resolution was adopted by vote of the directors present other than Mr. Miller, who did not vote:

RESOLVED that the form of agreement between Mr. Miller and this Corporation, relating to the cancellation of Mr. Miller's option on 25,000 shares of Common Stock of this Corporation, be and the same hereby is approved, and the officers of this Corporation are hereby authorized to execute an agreement in the form submitted to this meeting and to take all action necessary or convenient to carry into effect the intent of this agreement.

The Chairman then stated that with respect to the warrants for the purchase of 93,425 shares of Common Stock of this Corporation owned by Checker Cab Manufacturing Corporation, and the option on 25,000 shares of Common Stock of this Corporation owned by Mr. Morris Markin, it seemed most practicable to cancel said warrants and option at the time of closing with Checker Cab Manufacturing Corporation by agreements with the holders, and presented the proposed forms of agreement for this purpose.

1964 On motion duly made and seconded, it was unanimously

RESOLVED that the forms of agreement between Checker Cab Manufacturing Corporation and this Corporation and between Morris Markin and this Corporation, relating to the cancellation of warrants evidencing the right to purchase 93,425 shares of Common Stock of this Corporation, and the option on 25,000 shares of Common Stock of this Corporation be and the same hereby are approved;

* * *

Mr. McMahon thereupon presented to the meeting his resignation as a director of the Corporation, to take effect immediately, and withdrew from the meeting.

On motion duly made and seconded, it was unanimously

RESOLVED that the resignation of Mr. McMahon as a director of this Corporation be accepted, the same to be effective immediately.

Mr. Rank thereupon presented to the meeting his resignation as a director of the Corporation, to take effect immediately.

On motion duly made and seconded, it was unanimously

RESOLVED that the resignation of Mr. Rank be accepted, the same to be effective immediately.

Mr. Morris Markin was thereupon duly nominated as a director of the Corporation to fill the vacancy created by the resignation of Mr. McMahon.

There being no further nominations, the nominations were closed, and on motion duly made and seconded, it was unanimously

RESOLVED that Morris Markin be, and he hereby is, elected a director of this Corporation, in place of Mr. McMahon, resigned, to serve until the annual meeting of stockholders in 1932 and until his successor shall be elected and shall qualify. Mr. Markin thereupon took his place at the meeting.

Mr. Paul C. L'Amoreaux was thereupon duly nominated as a director of the Corporation to fill the vacancy created by the resignation of Mr. Rank.

There being no further nominations, the nominations were closed, and on motion duly made and seconded, it was unanimously

RESOLVED that Paul C. L'Amoreaux be, and he hereby is, elected a director of this Corporation, in place of Mr. Rank, resigned, to serve until the annual meeting of stockholders in 1932 and until his successor shall be elected and shall qualify. Mr. L'Amoreaux thereupon took his place at the meeting.

The Chairman then pointed out to the meeting that the office of Chairman of the Board of Directors, provided for in the By-Laws of the Corporation, was vacant. Mr. Morris Markin was thereupon duly nominated to the office of Chairman of the Board of Directors.

There being no further nominations, the nomina-
1965 tions were closed, and on motion duly made and seconded, it was unanimously

RESOLVED that Morris Markin be, and he hereby is, elected Chairman of the Board.

On motion duly made and seconded, the Secretary was directed to insert in the minute book, immediately following the minutes of this meeting, copies of the following papers submitted to this meeting: Agreement between this Corporation and Checker Cab Manufacturing Corporation, dated September 29, 1930; the proposed form of agreement between this Corporation and Morris Markin relating to stock of Equitable Casualty & Surety Company; the proposed forms of agreement between E. H. Miller and this Corporation, between Checker Cab Manufacturing Corporation and this Corporation, and between Morris Markin and this Corporation relating to the cancellation of warrants and options; the proposed form of statement to be filed with the Guaranty Trust Company; and the resignations of Messrs. McMahon and Rank as directors.

September 29, 1930

Parmelee Transportation Company, Dover, Delaware.

Dear Sirs:

Referring to the agreement between us dated September 9, 1930, relating among other things to the transfer of all of the outstanding stock of Motor Cab Transportation Company to your corporation:

We have entered into a supplemental agreement with Messrs. Markin and L'Amoreaux, a copy of which is annexed hereto as Schedule A, consenting to the reduction of the authorized capital stock of Motor Cab Transportation Company and the change of its outstanding common stock into a smaller number of shares.

This will confirm the understanding between us that this modification is satisfactory to you, and that the shares of stock of Motor Cab Transportation Company to be transferred by us to you will consist of 500 shares of preferred stock and 3,755 shares of new Common stock,—which will constitute all or the outstanding stock of said Motor Cab Transportation Company.

Except as expressly modified above, the terms and provisions of the above mentioned agreement between us dated September 9, 1930, shall remain in full force and effect.

Very truly yours

CHECKER CAB MANUFACTURING CORPORATION
By (Sgd.) RALPH E. OAKLAND
Vice President

Confirmed:
PARMELEE TRANSPORTATION COMPANY
By (Sgd.) E. H. MILLER
President

1966 September 29, 1930

Checker Cab Manufacturing Corporation, Kalamazoo, Michigan.

Dear Sirs:

Referring to the agreement between us dated September 5, 1930, relating to the acquisition by your Corporation of all of the outstanding stock of Motor Cab Transportation Company, a Delaware corporation.

It is provided among other things in said agreement that we will not permit Motor Cab Transportation Company to take any whatsoever out of the ordinary course of business. The board of directors of said company has recommended, and it appears to us to be desirable, that the authorized preferred stock of said company be reduced to 500 shares (the number of shares which is now outstanding); that the authorized common stock be reduced to 3,755 shares; that the conversion privilege of the preferred stock be eliminated; and that each 100 outstanding shares of common stock of Motor Cab Transportation Company will be changed into one share of the new common stock.

This will mean that the outstanding stock of Motor Cab Transportation Company which is to be transferred to your corporation will consist of 500 shares of preferred stock and 3,755 shares of new common stock.

It is understood that except for this modification, the terms and provisions of the agreement between us dated September 5, 1930, will remain in full force and effect.

If this modification is acceptable to you, will you kindly sign one of the enclosed carbons in the place provided and return the same to us.

Very truly yours

(Sgd.) Morris Markin
(Sgd.) Paul C. L'Amoreaux

The modification provided for in the foregoing letter is hereby consented to and approved.

Checker Cab Manufacturing Corporation

By (Sgd.) Ralph E. Oakland
Vice President

Memorandum of Agreement, dated October 2, 1930, between Checker Cab Manufacturing Corporation, a New Jersey corporation (hereinafter referred to as "Checker") party of the first part, and Parmelee Transportation Com-

pany, a Delaware corporation (hereinafter referred to as "Parmelee") party of the second part,

WITNESSETH: Under and pursuant to a certain agreement, dated April 17, 1929, between Parmelee and J. A. Sisto & Co., Parmelee has issued common stock purchase warrants representing the right to purchase 100,000 shares without par value of its common stock at any time up to and including April 1, 1934. Checker has purchased and acquired of said common stock purchase warrants, warrants representing the right to purchase 93,425 shares of such common stock. As part of a plan for the acquisition of a substantial interest in Parmelee, Checker has agreed to arrange for the cancellation of said common stock purchase warrants prior to surrender thereof, and Checker and Parmelee by this agreement desire to evidence such cancellation.

1967

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, and the sum of $10 by each of the parties hereto to the other in hand paid, receipt whereof is hereby acknowledged, the parties hereto agree as follows:

FIRST: Checker and Parmelee mutually agree that the common stock purchase warrants representing the right to purchase 93,425 shares of common stock of Parmelee now held by Checker and bearing the numbers set forth in Schedule A annexed hereto and made a part hereof, be cancelled and made void and of no effect as of the date hereof, and Parmelee and Checker hereby mutually agree that the same shall be marked "cancelled" and destroyed by Checker, and when said warrants are so marked "cancelled" and destroyed a certificate of such cancellation and destruction shall be delivered to J. A. Sisto & Co., as Warrant Agent, for the purpose of recording upon their records such cancellation and destruction.

IN WITNESS WHEREOF, the parties hereto have executed this agreement in several counterparts, as of the day and year first above written.

CHECKER CAB MANUFACTURING CORPORATION
By (Sgd.) R. E. OAKLAND
V. P. (Seal)

PARMELEE TRANSPORTATION COMPANY
By (Sgd.) E. H. MILLER
President (Seal)

MEMORANDUM OF AGREEMENT, dated October 2, 1930, between Parmelee Transportation Company, a Delaware corporation, (hereinafter referred to as the "Corporation") party of the first part, and Morris Markin of the City of New York, N. Y. (hereinafter referred to as "Mr. Markin"), party of the second part,

WITNESSETH: The Corporation and Mr. Markin have entered into a certain agreement, dated April 29, 1929, wherein, among other things, the Corporation has granted to Mr. Markin the option and right to purchase 25,000 shares of its common stock without par value at any time up to and including April 1, 1934, said agreement having been executed in connection with his employment by The Transportation Management Corporation, a wholly owned subsidiary of the Corporation. It is the intention and desire of the parties hereto that said agreement, dated April 29, 1929, shall be terminated and cancelled, to the end that said right and option of Mr. Markin shall no longer exist, and Mr. Markin has agreed to make such cancellation in order to permit the Corporation to consummate the acquisition of certain properties and securities from Checker Cab Manufacturing Corporation, which is deemed of great benefit to Mr. Markin as a stockholder of the Corporation.

1968

NOW, THEREFORE, in consideration of the premises and of the mutual convenants herein contained, and the sum of $10 by each of the parties hereto to the other in hand paid, receipt whereof is hereby acknowledged, it is agreed by and between the parties hereto as follows:

FIRST: The Corporation and Mr. Markin agree that the said agreement, dated April 29, 1929, granting said option and right to Mr. Markin to purchase 25,000 shares of the common stock of the Corporation and all rights and obligations thereunder be, and the same hereby are, as of the date hereof, terminated, cancelled, rescinded and of no further effect, and the parties hereto further agree that neither the Corporation nor Mr. Markin shall have any further rights thereunder, and hereby mutually release each other from any obligation or liability thereunder.

SECOND: The Corporation and Mr. Markin agree that the termination and cancellation of said agreement, dated April 29, 1929, and all rights and obligations thereunder shall in no manner have any effect upon or be deemed a modification or cancellation of any contract of employment now subsisting between Mr. Markin and The Transporta-

tion Management Corporation, a subsidiary of the Corporation.

IN WITNESS WHEREOF, the parties hereto have executed this agreement in several counterparts, as of the day and year first above written.

PARMELEE TRANSPORTATION COMPANY
By (Sgd.) E. H. MILLER
Pres (Seal)

(Sgd.) MORRIS MARKIN (L. S.)

Approved:
CHECKER CAB MANUFACTURING CORPORATION
By (Sgd.) R. E. OAKLAND, *V. P.*
(Seal)

Gov't. Ex. No. 66. (October 16, 1930, Minutes of Directors Meeting of Parmelee—)

Present: Morris Markin, E. H. Miller, Douglas Moffat, E. S. Higgins, Paul C. L'Amoreaux, F. L. Haveron being a majority of the Board of Directors and a quorum.

Mr. Markin, Chairman of the Board of Directors, called the meeting to order and acted as Chairman thereof. In the absence of the Secretary of the Corporation, Mr. Charles G. Fuller was duly appointed Secretary of the meeting and kept the minutes thereof . . .

* * *

The Chairman then suggested that the Board of Directors consider the advisability of appointing an Executive Committee of three members to conduct the business and manage the affairs of the Corporation during the intervals between the meetings of the Board of Directors.

1969 Upon motion duly made and seconded, the following resolutions were unanimously adopted:

RESOLVED that this Board of Directors, pursuant to the provisions of Article IV of the By-Laws of this Corporation, appoint Morris Markin, Ernest H. Miller and Paul C. L'Amoreaux an Executive Committee to conduct the affairs and manage the business of the Corporation during the intervals between the meeting of the Board of Directors, and, subject to the provisions of these resolutions, to have all the powers and authority of this Board of Directors in the management of the business and affairs of the Corporation (which are hereby delegated to said Executive Committee), including (but without limitation) the power to authorize the seal of the

Corporation to be affixed to all papers which may require it; and that such Executive Committee shall serve until the expiration of the respective terms of office as a director of each member thereof unless earlier discharged by resolution of the Board of Directors;

FURTHER RESOLVED that the Executive Committee may meet at any time within or outside the State of Delaware upon twenty-four hours' written, oral or telegraphic notice given by any one of said Executive Committee to the other two members thereof, but such notice may in any event be waived either before or after any meeting of the Executive Committee by an instrument in writing signed by any member of the Executive Committee not present at such meeting;

FURTHER RESOLVED that each member of the Executive Committee shall be paid the same fee for each meeting thereof which he shall attend as may be payable to him at such time for attendance at a meeting of the Board of Directors.

* * *

Upon motion duly made and seconded, the following resolutions were unanimously adopted:

RESOLVED that all shares of the capital stock of this Corporation owned in Motor Cab Transportation Management Corporation, a New York corporation, be transferred to M. C. T. Co., Inc., a New York corporation, to the end that the same may be merged with said M. C. T. Co., Inc. in accordance with the provisions of the Stock Corporation Law of the State of New York;

* * *

The Chairman then stated that he deemed it advisable to cause Motor Cab Transportation Company, a wholly owned subsidiary of this Corporation, to transfer its assets to this Corporation, the same consisting only of stocks of its various subsidiary companies, upon the assumption by this Corporation of its liabilities, and thereupon to dissolve, and he suggested that the Board of Directors authorize the President or any Vice-President of this Corporation to take the requisite action on behalf of this Corpora-
1970 tion, as the sole stockholder of Motor Cab Transportation Company, to effect such transfer and such dissolution.

Upon motion duly made and seconded, the following resolutions were unanimously adopted:

RESOLVED that the President and any Vice-President of this Corporation be and they hereby severally are authorized, directed and empowered, acting on behalf of this Corporation and in its name, as the sole stockholder of Motor Cab Transportation Company, a Delaware corporation, to execute any and all consents that may be necessary or convenient under the General Corporation Law of the State of Delaware to effect a transfer of assets of said Motor Cab Transportation Company and a dissolution thereof, and to vote for such action, and to do any and all other acts and things that may be advisable in the premises;

* * *

The Chairman then stated that there were at present outstanding Common Stock Purchase Warrants expiring on April 1, 1934, entitling the holders thereof to purchase 6,575 shares of the Common Stock of this Corporation, and that said Warrants had been issued under and pursuant to an agreement dated April 17, 1929, between this Corporation and J. A. Sisto & Co. He further stated that J. A. Sisto & Co. had been appointed Warrant Agents for the purpose of countersigning, issuing and recording said Common Stock Purchase Warrants and that at the present time he deemed it advisable to revoke the appointment of J. A. Sisto & Co. as Warrant Agents and to appoint Levin Rank as Warrant Agent in their stead.

Upon motion duly made and seconded, the following resolutions were unanimously adopted:

RESOLVED that the appointment of J. A. Sisto & Co. as warrant Agents for the Common Stock Purchase Warrants of this Corporation, issued under and pursuant to an agreement dated April 17, 1929 between this Corporation and J. A. Sisto & Co. be and the same hereby is revoked and canceled as of the 16th day of October, 1930;

FURTHER RESOLVED that Levin Rank be and he hereby is appointed Warrant Agent of this Corporation for the purpose of issuing, transferring and countersigning the Common Stock Purchase Warrants of this Corporation which have been issued by it under and pursuant to the agreement dated April 17, 1929 between this Corporation and J. A. Sisto & Co., in place and stead of J. A. Sisto & Co with all the powers and authorities heretofore granted by this Board of Directors to J. A. Sisto & Co. as Warrant Agents.

Gov't. Ex. No. 67. (September 8, 1943, Letter from I. M. Nelson to R. E. Oakland, V. P. and Tr. of C. C. M.—)

The letter from the Commissioner of Internal Rev-
1971 enue, against which we filed an appeal with the Board of Tax Appeals, showed a net income of $794,722.61 and a tax liability of $95,366.71, of which $34,953.05 had previously been paid, leaving a balance of $60,413.66. In my petition, which I filed with the Board of Tax Appeals, I claimed a number of other deductions, namely, . . . (7) loss of $1,157,266.41 sustained on the transfer of the capital stock of the Motor Cab Transportation Corp. etc. to Parmelee in exchange for Parmelee stock and (8) . . .

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In the conferences which I had with the Government, I endeavored to show that the transfer of the stock of the Motor Cab Transportation Co. etc. in exchange for the 422,787 shares of the Parmelee constituted a sale and not a reorganization, . . .

Gov't. Ex. No. 68. (November 24, 1945, Letter Oakland, V. P. and Tr. of C. C. M. to R. E. Niederwiesen—)

I wrote you under date of November 20th regarding reinstating the cost of the Parmelee stock on the books of Checker Cab Manufacturing Corporation. An alternative way of setting up this valuation would be the cost basis for income tax purposes, which I believe is computed as follows:

In 1930 LaSalle Discount transferred all of the stock of Motor Cab Transportation Company (Delaware) for stock of Checker Cab Manufacturing Corporation in a tax-free reorganization under Section 112(b) (3) and Article 574. Under the last example in Article 598 of Regulations 74 the cost basis of the Motor Cab Transportation Company stock in the hands of Checker Cab Manufacturing Corporation is the same as the cost of the Motor Cab stock in the hands of LaSalle Discount Company. In May, 1945, in a tax dispute of Cab Sales and Parts Corporation (successor to LaSalle Discount Company), which was settled with a conferee, this cost basis was agreed to as follows:

Cost per book of LaSalle Discount Company		$882,127.75
Less:		
Adjustment for Depreciation	$28,383.78	
Adjustment for Losses Availed of in Consolidated Return of 1930	3,062.70	
Adjustment for Loss on sale of stock to E. Hoen	1,163.80	
Adjustment account of Loss on sale of Stock to H. Flur	690.21	
Total Adjustments		33,300.49
Adjustment Cost of Motor Cab Stock		$848,827.26

In September, 1930, Checker Cab Manufacturing Corporation transferred the stock of Motor Cab Transportation Company preferred stock in Parmelee Transportation Company, bonds of Parmelee Transportation Company, and warrants to purchase stock in Parmelee Transportation Company, to Parmelee Transportation Company in exchange for 422,787 shares of common stock of Parmellee Transportation Company. This, I believe, is a tax-free reorganization under Section 112(b) (4) and Article 574. The cost to Checker Cab Manufacturing Corporation of the preferred stock, bonds, and warrants, is $2,028,113.50. The adjusted cost of all Checker's investment in Parmelee stock would, therefore, be as follows:

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Cost of Motor Cab Transportation Company (Delaware) Stock	$ 848,827.26
Cost of Bonds	1,009,400.00
Cost of Warrants	18,713.50
Cost of Preferred Stock	1,000,000.00
Total Cost of 422,787 shares	$2,876,940.76
Cost of 23,000 shares	230,000.00
Long-term note of Parmelee contributed to its capital per resolution of Board of Directors December, 1935	1,338,943.24
Note of Parmelee Transportation Company plus interest contributed to capital of Parmelee Transportation Company December, 1935	600,417.77
Total	5,046,301.77

I wish to call your attention to the fact that of the interest contributed to Parmelee in December, 1945, $25,147.08 was accrued and credited to income in the year 1935.

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cc Mr. C. P. G. Fuller Mr. Fuller:

If you agree that the transfer between Checker and Parmelee was a tax-free reorganization we may be able to sustain the cost of $2,876,940.76 for invested capital of Parmelee instead of the $2,378,176.88 as computed by the Revenue Agent. R. E. Oakland

Gov't. Ex. No. 69. (Plaintiff's Interrogatory No. 15—)

To CCM. State from whom they are purchased, and the consideration paid by you for the 422,787 shares of common stock of Parmelee, to which you refer in paragraph 17 of your answer.

Gov't. Ex. No. 70. (CCM's Answer to Plaintiff's Interrogatory No. 15—)

Parmelee issued 422,787 shares of its common stock to CCM in consideration of the transfer by CCM to Parmelee of 10,000 shares of $100 par value 6% preferred 1973 stock of Parmelee, $1,442,000 principal amount 6% debentures of Parmelee, 118,425 warrants to purchase common stock of Parmelee, 500 shares of preferred and 375,500 shares of common stock of Motor Cab Transportation Corporation, 500 shares of stock of Alpha Brokerage Company and 100 shares of Equity Adjustment Bureau.

Gov't. Ex. No. 71. (Plaintiff's Interrogatory No. 14—)

To Parmelee. With respect to your denial of part of the allegations of paragraph 24 of the amended complaint, state:

(a) The names of each corporation and its predecessors which have been merged in, or whose assets have been acquired by, National Transportation Company since January 1, 1929;

(b) The date of each merger referred to in subparagraph (a) of this paragraph;

(c) The date of each acquisition of assets referred to in subparagraph (a) of this paragraph;

(d) Whether Parmelee, about 1930, purchased, directly or indirectly, either the assets or any stock of Motor Cab Transportation Company.

Gov't. Ex. No. 72. (Parmelee's Answers to Plaintiff's Interrogatory No. 14—)

(a), (b), and (c) Universal Renting Corp., was merged into National Transportation Co., Inc. on April 19, 1932. The certificate of merger was filed April 22, 1932.

Portrans Realty Corporation, formed from the consolidation of Yellow Taxi Realty Corporation and One East 140th Street Corporation, and National Transportation Co., Inc. were consolidated on November 29, 1943 into National Transportation Co., Inc. The certificate of consolidation was filed November 30, 1943.

National Transportation Co., Inc. acquired certain taxicabs, tools and equipment from Hamilton Peters Operating Co., Inc., and Yellow Taxi Corporation, New York, affiliated companies, during 1934 and 1935; see answer to Interrogatory No. 6.

(d) Parmelee Transportation Company purchased all of the outstanding stock of Motor Cab Transportation Corporation from Checker Cab Manufacturing Corporation on October 1, 1930 pursuant to an agreement dated September 29, 1930. Subsequently, Parmelee Transportation Company dissolved such corporation and received in dissolution all assets of Motor Cab Transportation Corporation.

Gov't. Ex. No. 73. (September 23, 1932, Minutes of Meeting of Executive Committee of CCM—)

Present: C. L. Hartman, Jr. and Morris Markin
being a majority of the Executive Committee and a quorum.

Mr. Hartman, Chairman of the Executive Committee, called the meeting to order and presided thereat. Mr. Polansky, Secretary of the Corporation, being present, acted as Secretary of the meeting and kept the minutes thereof.

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The Chairman then stated that the extended instalments of the equipment notes of Hamilton-Peters Operating Co., Inc., National Transportation Co., Inc. and Yellow Taxi Corporation, New York, New York operating subsidiaries of Parmelee Transportation Company, became due on August 1, 1932, and although demand had been made for the payment thereof, these operating companies had not obtained sufficient cash to fully pay the matured instalments and interest. He further stated that although Fisk Discount Corporation, a subsidiary of this corporation, the present holder of the equipment notes, had the legal right

to foreclose on the security and obtain a judgment for any deficiency arising after foreclosure, he deemed it imprudent for it to enforce its legal rights at the present time, inasmuch as the amount realized upon foreclosures would not be a substantial amount of the indebtedness, and any deficiency judgment would be uncollectible and would probably force the operating companies into bankruptcy. He further stated that the management deemed it advisable to extend and refund these equipment notes, together with other indebtedness owing by their guarantor, Parmelee Transportation Company, so that these companies might through operations have the opportunity of paying off the equipment notes and any other notes that might be given in connection with such refunding. He further stated that it was the opinion of the management that if this was done Parmelee Transportation Company would be able to make available a substantial amount in cash at the present time to be applied against such notes, and that substantially more would be realized over a period of time than would be realized if Fisk Discount Corporation rigorously enforced its legal rights.

The President then stated that he had executed on behalf of this Corporation an agreement with Parmelee Transportation Company, arranging for the consummation of the refunding of these equipment notes and other obligations, and he presented to the meeting a copy of said agreement, dated September 1, 1932.

Upon motion duly made and seconded, the following resolutions were unanimously adopted:

RESOLVED that all action of the President of this Corporation in executing and delivering the agreement, dated September 1, 1932, between this Corporation, Fisk Discount Corporation and Parmelee Transportation Company, be and the same hereby is in all respects approved, ratified, confirmed and adopted as and for the action of this Corporation.

Gov't. Ex. No. 74. (September 28, 1932, Minutes of Directors Meeting of Parmelee—)

Present: E. S. Higgins, Paul C. L'Amoreaux,
1975 Levin Rank being all of the directors in office and a quorum.

Mr. Higgins, Vice-President of the Corporation, called the meeting to order and acted as Chairman thereof. Mr. Rank, Secretary of the Corporation, acted as Secretary of the meeting and kept the minutes thereof.

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The Chairman of the Executive Committee then stated that although the operation of the Corporation had resulted in substantial losses, and that the Corporation had not received sufficient income to meet the interest requirements on its 6% Sinking Fund Convertible Debentures which was payable on October 1, 1932, he felt that there was a fair possibility that the benefits to the taxicab operating industry which would accrue through the appointment of the Board of Taxicab Control in New York City would begin to be felt during the winter months, provided, of course, there was some improvement in business conditions. He further stated that although he believed the directors would be justified in defaulting in the payment of the interest on the debentures on the past earnings record of the Corporation, he believed that a default at this time would result in a receivership or in bankruptcy, which would deprive the Corporation of any of the benefits to it that might accrue during the winter months, and, accordingly he condiered it advisable and to the best interests of the debenture holders and the stockholders of the Corporation (although under normal circumstances he would not make such a recommendation), to pay out of working capital the interest on the debentures due on October 1, 1932, inasmuch as a default in interest at this time would place the Corporation in a position in receivership or bankruptcy where the debenture holders would be able to realize very little from a liquidation of its assets. The Chairman reminded the directors that a continuation of the Corporation in business, in his opinion, represented the sole method which would permit the debenture holders eventually to realize a substantial amount on their investment.

* * *

The Chairman then stated that Yellow Taxi Corporation, New York, National Transportation Co., Inc. and Hamilton-Peters Operating Co., Inc., operating subsidiaries of this Corporation in New York City, were indebted to Fisk Discount Corporation on equipment notes, of which instalments aggregating $221,269.39, including interest, became due on August 1, 1932. He further stated that the balance due after the payment of these instalments was considerably in excess of $1,000,000, and that the payment of these instalments had been guaranteed by this Corporation. He further stated that Fisk Discount Corporation, after negotiations, had agreed that if this Corporation made available to one or more operating subsidiaries sufficient cash to pay a substantial portion of the instalments due August 1, 1932, and such payment was

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made, Fisk Discount Corporation would (1) reduce and extend the amount of the equipment notes; (2) accept the 6% joint Series A promissory notes of this Corporation and the respective operating subsidiary, payable coincident with the payment of the debentures of this Corporation, for the difference between the present amount of such equipment notes, plus accrued interest, and the amount of the equipment notes as reduced, and like Series A promissory notes of this Corporation for other indebtedness owing by it to Fisk Discount Corporation and to Checker Cab Manufacturing Corporation, such joint promissory notes to be amortized out of all available net income received by this Corporation after the payment of interest on the debentures, and such joint promissory notes to be due immediately in the event of the receivership or bankruptcy of either maker or in the event the debentures are declared to be in default; and (3) release this Corporation from all guaranties or obligations now owing by it. He then stated that on behalf of this Corporation he had consummated these negotiations and he submitted to the meeting copies of the various instruments that he had executed in connection therewith on behalf of this Corporation.

Upon motion duly made and seconded, the following resolutions were unanimously adopted:

RESOLVED that all action taken by the officers of this Corporation in executing the instruments, including the 6% joint promissory notes referred to by the Chairman and presented to this meeting, to consummate the negotions and to complete the refinancing and the lending of sufficient funds to Yeflow Taxi Corporation, New York, to pay a portion of the instalments of principal on the equipment notes of National Transportation Co, Inc., as outlined by the Chairman to this meeting, and as set forth in the instruments represented to this meeting, be and the same hereby is in all respects ratified, approved, confirmed and adopted as and for the action of this Corporation.

* * *

Upon motion duly made and seconded, the following resolutions were unanimously adopted:

RESOLVED that any officer of this Corporation is authorized, directed and empowered to make such arrangements for the depositing of the stock held by this Corporation in Chicago Yellow Cab Co., Inc. in a voting trust, or otherwise to preserve the equity control of this Corporation in said Chicago Yellow Cab Co., Inc.

1977 *Gov't. Ex. No. 75. (September 26, 1933, Minutes of Executive Committee of Part of Directors of CCM—)*

Present: W. R. Beal, L. B. Manning, Morris Markin being all of the members of the Executive Committee.

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The Chairman then stated that Parmelee Transportation Company was in need of funds to meet the interest on its debentures due on October 1, 1933, and he suggested that the Executive Committee consider a loan to Parmelee Transportation Company for such purpose.

Upon motion duly made and seconded, the following resolution was unanimously adopted:

RESOLVED that this Corporation lend the sum of $90,000 to Parmelee Transportation Company, a Delaware corporation, upon its demand note, bearing interest at the rate of six per cent per annum for said sum, . . .

Gov't. Ex. No. 76. (December 23, 1935, Minutes of Directors Meeting of CCM—)

There were present at the meeting: L. B. Manning, Morris Markin, W. H. Beal, R. E. Oakland, R. S. Pruitt, being a majority of the Board of Directors of the corporation. Mr. Markin acted as Chairman and Mr. Pruitt as Secretary of the meeting.

The Chairman stated that the corporation's subsidiary, Parmelee Transportation Company, was indebted to the Checker Cab Manufacturing Corporation in the amount of $1,338,943.24 against which the corporation had heretofore set up a 100% reserve and in the additional amount of $549,118.57 against which no reserve had been set up; that he recommended that the said indebtedness of Parmelee Transportation Company in the amount of $1,338,943.24 be written off against said reserve and recorded on the records of Parmelee Transportation Company as a contribution of like amount to its capital, and that the Checker Cab Manufacturing Corporation make a further contribution of $549,118.57 to the capital of its said subsidiary, Parmelee Transportation Company, by cancelling the indebtedness due from Parmelee Transportation Company in that amount plus interest thereon, and that said contribution of $549,118.57 be recorded on the balance sheet of Checker Cab Manufacturing Corporation by increasing by a like amount, the book value of its investment in the capital stock of Parmelee Transportation Company.

Mr. Pruitt stated that the proposed contribution to the capital of Parmelee Transportation Company had been discussed with the company's auditors Messrs. Arthur Young & Company, who by letter of opinion to him dated
1978 December 21st had stated that the accounting treatment of the contribution should be effected by a transfer from the note receivable account to the investment account with adequate explanation given in the Auditors' certificate so that the stockholders will be properly advised of the contribution.

After general discussion of Mr. Markin's recommendations, the following resolutions were offered, seconded and unanimously carried:

BE IT RESOLVED that the indebtedness of Parmelee Transportation Company to this corporation in the amount of $1,338,943.24 against which a 100% reserve has heretofore been set up, shall be written off against said reserve, and recorded on the books and records of Parmelee Transportation Company as a contribution of that amount to its capital; and

BE IT FURTHER RESOLVED that the additional indebtedness of Parmelee Transportation Company to this corporation in the amount of $549,118.57 plus interest, shall be cancelled in connection with a further contribution of a said amount by said corporation to the capital of its subsidiary, Parmelee Transportation Company, and that said contribution shall be recorded on the balance sheet of this corporation by increasing in the same amount, the book value of its investment in the capital stock of Parmelee Transportation Company; and

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Mr. Oakland then presented a budget of the Checker Cab Manufacturing Corporation showing estimate of cash receipts and disbursements for the period December, 1935 to September, 1936, in connection with the construction and sale of 3500 taxicabs indicating that the maximum the corporation would require to borrow to finance said property, would be $1,728,539.16 in the month of September, 1936. After consideration of said budget, upon motion offered, seconded and unanimously carried, the same was approved.

1979 *Gov't. Ex. No. 78. (December 6, 1933, Memorandum of a Conference Between Markin, Rank, Oakland, and Fuller—)*

At a conference at which Messrs. Markin, Rank, Oakland, and Fuller were present, the following program of
1980 funding Parmelee obligations was tentatively agreed upon (1) The open account of Yellow Taxi Company of Minneapolis amounting to $42,081.90 is assigned to Parmelee in exchange for its one year note of the same amount.

(2) The note of Yellow Cab Company of Pittsburgh in the amount of $109,626.94 is assigned to Parmelee in exchange for Parmelee's one year note of the same amount.

(3) The National Transportation Co. Inc. balloon note of $275,110.00 due December 1, 1933 is transferred to Parmelee in exchange for Jersey Alpha paper on which there is now due, including accrued interest to December 1, 1933, the sum of $322,710.69.

(4) The excess credit accruing to Parmelee from this transaction will be applied to the balloon note of Yellow Taxi Corporation, New York maturing December 1, 1933 in the amount of $339,293.84 including interest; Parmelee, in this connection, will agree to deliver to Checker the Bac mortgage of $67,000, and upon such delivery the Yellow note will be reduced by the same amount. For the time being, the Yellow note will be extended for a period of one year.

(5) The Hamilton-Peters Operating Co. Inc. balloon note, due on December 1, 1933 in the amount of $42,000 with accrued interest of $3,120, will be extended for a period of one year.

(6) In addition to the foregoing, Checker will deliver to Parmelee the following long term notes due April 1, 1944:

Parmelee Transportation Company...	$230,749.95
Accrued interest to Dec. 31st	17,375.55
National Transportation Co. Inc.	324,078.21
Accrued interest to Dec. 31st	24,305.85
Hamilton-Peters Operating Co. Inc. ..	126,885.00
Accrued interest to Dec. 31st	9,523.88
Total	$733,018.53

These notes have all been fully reserved against on the Checker Balance Sheet.

(7) Parmelee will retain the P-H Taxi note and will cancel any obligation of Fisk and/or Checker on their endorsements of such note.

(8) Parmelee further agrees to obtain title to the collateral securing the P-H note and transfer the same consisting of two hundred fifty (250) Saf-T cabs (more or less) to Checker.

(9) Parmelee further agrees to sell and deliver to Checker at one dollar ($1) apiece all taxicabs now owned by Yellow that will be withdrawn from operation in view of the purchase of Model T cabs.

Insofar as the above program relates to the treatment of Checker's Balance Sheet by Arthur Young & Company in their audit at the end of the fiscal year, questions of reserves, etc. occasioned by the above memorandum should be referred to Arthur Young & Company and their opinion obtained as to their proposed treatment, in accordance with the request of Mr. Pruitt.

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Gov't. Ex. No. 79. (April 26, 1940, Minutes of Directors Meeting of CCM—)

There were present at the meeting: Morris Markin, Ralph E. Oakland, James A. King, R. S. Pruitt
being a quorum of the directors of the corporation.

Mr. Markin acted as Chairman and Mr. Pruitt as Secretary of the meeting.

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2. Mr. Oakland then stated that on March 23 the corporation had borrowed $150,000 from National Transportation Co., Inc. and had agreed to pay interest at the rate of 4% per annum on said loan and to repay the same at the rate of $150 per cab on each new taxicab delivered to National Transportation Co., Inc., and that the action of the officers in negotiating such loan should at this time be ratified and approved. After due consideration, the following resolution was offered and unanimously carried:

RESOLVED that the action of the officers of this corporation in borrowing for it and in its behalf the sum of $150,000 from National Transportation Co., Inc. and in agreeing to repay said loan at the rate of $150 per cab on each new taxicab delivered, and in agreeing to pay interest at the rate of 4% per annum on the moneys so borrowed, shall be and said action is hereby ratified and approved.

Gov't. Ex. No. 80. (August 13, 1941, Letter R. J. Wyatt, Tr. of Parmelee to Oakland, Tr. CCM.—)

The New York operations will be in need of about $75,000 shortly after the 15th of this month.

There is in progress at present an audit of the funds on deposit with the Commissioner of Motor Vehicles, with which you are conversant; and we are hopeful that before the end of September, a substantial refund will be made to us from these funds.

In view of the above, would it be possible for Checker Cab Manufacturing Company to advance to us the above stated sum, repayable as early as possible out of the refund expected from the Commissioner's funds. We would, of course, provide you with a note in the above amount.

1982 *Gov't Ex. No. 81. (August 15, 1941, Letter R/E. Oakland, VP and Tr. of CCM to Wyatt, Tr. of Parmelee—)*

We have your letter of August 13, 1941, and we are enclosing herewith our check for $75,000.00. Please make up the note and execute it and send it on to us, in accordance with this letter.

Gov't Ex. No. 82. (December 19, 1945, Minutes of Directors Meeting of CCM—)

A special meeting of the Board of Directors of Checker Cab Manufacturing Corporation, a New Jersey corporation, was held at the offices of the corporation in Kalamazoo, Michigan, at three o'clock P. M., on December 19, 1945, pursuant to Waiver of Notice duly signed by all of the directors of the corporation in accordance with the By-Laws.

There were present at the meeting: Messrs. Morris Markin, Ralph E. Oakland, James A. King, Herbert C. Snow, being a quorum of the directors of the corporation.

Mr. Morris Markin, President of the corporation, acted as Chairman, and in the absence of Mr. R. S. Pruitt, Secretary of the corporation, Mr. Ralph E. Oakland recorded the minutes as acting Secretary of the meeting.

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3. Mr. Oakland then explained that in August, 1932, this corporation had reduced the book value of its investment in the stock of Parmelee Transportation Company to $1 per share, or an aggregate amount of $445,787, by debiting its paid-in surplus account with the sum of $3,417,267.22; also, that in December, 1935, this corporation had contributed to the capital surplus of Parmelee Transportation Company the indebtedness of that corporation owed to this corporation in the amount of $1,338,943.24, said in-

debtedness being written off against the reserve for bad debts which had been created out of the earned surplus of the corporation, and that in the same month this corporation had also contributed to the capital surplus of Parmelee Transportation Company in additional indebtedness owned by that company to this corporation in the amount of $600,417.77, thereby increasing the book value of the 445,787 shares of Parmelee Transportation Company stock owned by this corporation to $1,046,204.77. Mr. Oakland then called attention to the great improvement in the asset value, market value and earnings of the stock of Parmelee Transportation Company which had been brought about since 1932, and expressed the opinion that the true value of 445,787 shares of the stock of Parmelee Transportation Company owned by this corporation is now in excess of the original cost thereof to the corporation and expressed the opinion that it would be in the 1983 best interests of this corporation and its stockholders to have its books of account and balance sheet reflect the actual cost of said shares to the corporation, including the contributions made in 1935, rather than the value at which said investment has been heretofore carried on the books and balance sheet. Mr. Oakland then recommended that the value of said 445,787 shares of the stock of Parmelee Transportation Company carried on the books of the corporation since 1935 in the amount of $1,046,204.77 be increased to and restored to an amount that would show the acquisition cost of said shares and subsequent donations made by this corporation through the elimination of certain indebtedness owed to it by Parmelee Transportation Company, thereby increasing the valuation of the Parmelee Transportation Company stock on the books and balance sheet of this corporation from $1,046,204.77 to $5,802,415.23, and that the amount so added to such valuation, or $4,756,210.46 be credited to the capital surplus account of the corporation. Mr. Oakland further stated that he had discussed this recommendation with the corporation's auditors, R. E. Niederwiesen Co., and that the same met with their approval. After general discussion, upon motion duly made and seconded, the following preambles and resolution were unanimously adopted:

WHEREAS, in August, 1932, this corporation debited paid-in surplus account and credited investment in the stock of Parmelee Transportation Company owned by this corporation with the sum of $3,417,267.22, thereby reducing the book value of the investment in this corpo-

ration in the stock of Parmelee Transportation Company to an amount equivalent to $1 per share in respect of said stock, or an aggregate amount of $445,787; and

WHEREAS, in December, 1935, this corporation contributed to the capital surplus of Parmelee Transportation Company the indebtedness of that company owing to this corporation in the amount of $1,338,943.24, said indebtedness being written off against the reserve for bad debts which had been created out of the earned surplus of this corporation; and

WHEREAS, in December, 1935, this corporation also contributed to the capital surplus of Parmelee Transportation Company an additional indebtedness of that company owing to this corporation in the amount of $600,417.77, thereby increasing the then book value thereof to $1,046,204.77; and

WHEREAS, it is the sense of this Board of Directors that the market value and the true value of the 445,787 shares of stock of Parmelee Transportation Company owned by this corporation is in excess of the original cost thereof to this corporation, and that it is to the best interests of this corporation and its stockholders that its books of account reflect the cost of said stock rather than the value heretofore carried on its books;

1984 NOW, THEREFORE, BE IT RESOLVED that the value of said 445,787 shares of stock of Parmelee Transportation Company now carried on the books of this corporation at $1,046,204.77 be increased to and restored to an amount that would show the acquisition cost of these shares and subsequent donations made by this corporation through the elimination of certain indebtedness of Parmelee Transportation Company, namely, acquisition cost $3,863,054.22, indebtedness on obligations $1,939,361.01, total $5,802,415.23; the indebtedness of the Parmelee Transportation Company was contributed to the capital surplus of that company, and that said increase in the valuation from $1,046,204.77 to $5,802,415.23, or $4,756,210.46, be credited to the capital surplus account of this corporation; and the proper officers of the corporation and its accountants be and they hereby are authorized, directed and empowered to make such entries and do all other acts and things that may be necessary or convenient to carry into effect the intent and purpose of the foregoing Preambles and Resolution.

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1987 *Gov't. Ex. No. 84. (May 14, 1929 Telegram Benjamin Samuels of Yellow to Markin—)*

Believe it important to have conference within next few days reference Checker Chicago Litigation Stop If convenient to you can make appointment for next Monday at latest with their representative and am confident that a proper disposition of the entire litigation can be arrived at with very little trouble Stop Wire reply as soon as convenient . . . Charge Yellow Cab Co. Franklin 6290.

Gov't. Ex. No. 85. (May 15, 1929, Telegram Markin to Samuels—)

Call me twelve o'clock your time.

Gov't. Ex. No. 86. (May 20, 1929, Letter Samuels to Ernest Miller—)

I had a conference today with Charlie Barrett and Weinshenker, and Weinshenker says that he cannot get back of our ordinance in connection with the limitation of licenses, unless the litigation with the Checker Manufacturing is gotten out of the way. He is very anxious to have a conference with Mr. Markin and Mr. Barrett suggests that such a conference be held, but Weinshenker has received instructions from the officers of the Taxi Co. under no circumstances to sit in on any conference with Mr. Markin's attorney, Lamoreaux. Apparently, there is considerable feeling between these parties.

I spoke to Mr. Lamoreaux and I understand his position thoroughly. He states that he is in favor of a settlement if it can be brought about, and he will not under any circumstances put any stumbling blocks in the way of it, but there are two propositions which he insists upon. First, that the settlement must be such as will be approved
1988 by Judge Wilkerson of the Federal Court, and second, it must be made under such circumstances that it will be recognized by the Checker Taxi Co. as properly authorized. In these respects, he is absolutely correct, and I believe that if properly handled the two objections raised by Mr. Lamoreaux can be taken care of.

I think that if you will get in touch with Mr. Markin and show him this letter, that he ought to be convinced that a meeting such as suggested by Mr. Barrett and Mr. Weinshenker should be held without any further delay, and I am certain that all details in regard to a proper, fair settlement to dispose of this litigation would be arrived at. Of

course, it goes without saying that Mr. Markin should under no circumstances enter into a final agreement unless the same has the full sanction and approval of Mr. Lamoreaux, and from his attitude I am certain that he will approve anything that Mr. Markin finally arrives at, if the Court will approve the settlement and the proper authority is given by the Taxi Co. At any rate, we will get nowhere on the question of the limitation of taxicab licenses as long as this litigation is hanging in the balance, and as that is the important thing just now, and as Mr. Markin really feels it would be a tremendous advantage to have the Federal Court litigation definitely determined, I think quick action, at this time, will bring it about so that both measures will terminate for the benefit of all concerned.

I am certain that Mr. Barrett's suggestion in the matter should be followed, and this should not embarrass either Mr. Markin or Mr. Lamoreaux, because I would not want him to act in the matter, without the full knowledge and advice of his personal attorney.

Will you be good enough, therefore, to communicate with him at your earliest opportunity and advise me.

Gov't. Ex. No. 87. (January 10, 1930, Minutes of Directors Meeting of CCM—)

Present: Morris Markin, Norris B. Henrotin, Graham Adams, Henry Weiss, Albert F. Jaeckel, Jack Polansky, F. L. Haveron

being a majority of the Board of Directors and a quorum.

Mr. Markin, President of the Corporation, called the meeting to order and acted as Chairman thereof. Mr. Haveron, Secretary of the Corporation, acted as Secretary of the meeting and kept the minutes thereof.

• • •

The Chairman then submitted to the meeting a form of settlement contract to be executed by this Corporation and Checker Taxi Co., an Illinois corporation, and Cab Sales and Parts Corporation, a Delaware corporation, for the purpose of disposing of certain litigation between this Corporation and Checker Taxi Co.

After a full discussion of the terms and provisions 1989 of the form of contract submitted to the meeting, the following resolutions were, upon motion duly made and seconded, unanimously adopted:

RESOLVED that the form of contract to be entered into by this Corporation and Checker Taxi Co., an Illinois corporation, and Cab Sales and Parts Corporation, a

Delaware corporation, relating to the settlement of the pending litigation between this Corporation and Checker Taxi Co., and the purchase of cabs by Checker Taxi Co., and/or by its drivers and/or its driver-stockholders from Cab Sales and Parts Corporation, and the terms and provisions contained therein, be and the same hereby are in all respects approved, . . .

* * *

Upon motion duly made and seconded, the following resolutions were unanimously adopted:

RESOLVED that the authority of the President and any Vice-President to execute, acknowledge and deliver the contract proposed to be entered into with Checker Taxi Co. and Cab Sales and Parts Corporation by this Corporation be contingent upon the execution and delivery by this Corporation of a contract in form satisfactory to the President of this Corporation, and approved by Chadbourne, Hunt, Jaeckel & Brown, counsel, with Cab Sales and Parts Corporation, whereunder Cab Sales and Parts Corporation shall agree to deliver and pay over to this Corporation 50% of any and all liquidated damages that Cab Sales and Parts Corporation may at any time obtain under and pursuant to said contract between this Corporation, Checker Taxi Co. and Cab Sales and Parts Corporation.

Gov't, Ex. No. 88. (February 5, 1930, Minutes of Directors Meeting of Checker Which Set Out Agreement Between C.C.M. Checker, and Cab Sales Settling Certain Litigation—)

We, the undersigned Directors of Checker Taxi Company, do hereby acknowledge receipt of the above and foregoing notice and consent to the holding of said meeting at the time and place named in said notice and for the purpose stated in said notice.

Dated at Chicago, Illinois, this the 5th day of February A. D. 1930.

Robert E. McLaughlin	Joseph Wise	A. E. Kruger
Harry I. Gordon	P. C. Thomas	J. Heslin
R. M. Magill	E. W. Anderson	C. L. Crosby
Samuel Cohen		

* * *

There were present Daniel M. Healy, General Counsel for the Company, and the following Officers and Directors:

1930 Robert E. McLaughlin, Harry I. Gordon,
R. M. Magill, Samuel Cohen,
Joseph Wise, P. C. Thomas,
E. W. Anderson, A. E. Kruger,
J. Heslin, C. L. Crosby,
Max Raifman,

Whereupon, Daniel M. Healy, General Counsel for the Company presented a proposed contract between this Company and Checker Cab Manufacturing Corporation, a New Jersey Corporation, and Cab Sales and Parts Corporation, a Delaware Corporation, in words and figures as follows:

THIS AGREEMENT, made and entered into by and between Checker Cab Manufacturing Corporation, a corporation duly organized and existing under and by virtue of the laws of the State of New Jersey, hereinafter in this instrument called M. Co.: and

Checker Taxi Company, a corporation duly organized and existing under and by virtue of the laws of the State of Illinois, hereinafter in this instrument called Taxi Co.: and

Cab Sales and Parts Corporation, a corporation duly organized and existing under and by virtue of the laws of the State of Delaware, and qualified to do business in the State of Illinois, hereinafter in this instrument called Sales Co.:

WITNESSETH: That WHEREAS, M. Co. is in the business of manufacturing and selling Checker taxicabs and did heretofore on the 24th day of February, A. D. 1925, enter into a contract in writing to dispose of litigation pending between M. Co., *et al*, and the Taxi Co., and providing for the purchase of cabs by the Taxi Co. or its stockholders and drivers from the M. Co.: and

WHEREAS, thereafter, in connection with the settlement of said litigation pending between Taxi Co. and the M. Co., *et al*, a decree fixing the status of the parties in respect to the rights and use of the Checker border and monogram was duly entered in the Superior Court of Cook County, Case No. 386030; that thereafter Taxi Co. did file a bill of review in the Superior Court of Cook County, Case No. 421997, seeking to vacate, review and impeach said decree so filed as aforesaid, alleging, among other things, that the entry of said decree was not authorized by the Board of Directors of Taxi Co., and subsequently alleging that said settlement and the entry of said decree was procured by fraud, which charge was denied by M. Co.: and

WHEREAS, M. Co. did file a bill for an accounting against the Taxi Co., in the United States District Court in the Northern District of Illinois, Eastern Division, Case No. 7726, seeking to recover damages for breach of said contract, of February 24th, 1925 and Taxi Co. defended said suit on the ground, among other things, that said contract was procured by fraud; that said charge was denied by M. Co. and said cause was thereupon referred to Thomas J. Peden, Master in Chancery of said United States District Court, to determine whether or not said contract was valid and binding on Taxi Co.: and

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WHEREAS, said Thomas J. Peden has heard the evidence presented bearing upon said issue, and has made and filed his report and findings of fact; that said reports find that the contract sued upon is valid in all respects, and binding upon Taxi Co.: and

WHEREAS, M. Co. claims damages substantially in excess of One Million Three Hundred Thousand Dollars ($1,300,000); and

WHEREAS, Sales Co. is engaged in the business of selling Checker taxicabs in the State of Illinois and of furnishing repair and replacement parts in that state; and

WHEREAS, Taxi Co. is in the business of furnishing taxi service in the City of Chicago and its environs and desires to standardize the cabs used in such service and provide for its future requirements and

WHEREAS, M. Co. and Taxi Co. have agreed upon a settlement of said damage claim, arising under said contract of February 24th, 1925, and all other differences between them, as hereinafter provided:

NOW, THEREFORE, in consideration of the premises and of the covenants and agreements herein contained, it is covenanted and agreed as follows:

(A) Covenants Relating to Settlement—1. That M. Co. does by this instrument recognize for all time to come the sole and exclusive right of Taxi Co. to the use of "Checker" emblems, the word "Checker" and all combinations thereof now and heretofore used by said Taxi Co. as service emblems and trade names in connection with its business of furnishing taxi service in the counties of Cook, Lake and Dupage, in the State of Illinois, and Lake, Porter, Laporte, Stark and Pulaski Counties in the State of Indiana,

2: That M. Co. and Taxi Co. will cause their respective attorneys simultaneously with the delivery of this agreement to consent in open court to the entry of a decree in

said suit of M. Co. against Taxi Co., now pending in the United States District Court for the Northern District of Illinois, Eastern Division, Case No. 7726. as follows: (a) finding that the contract of February 24th, 1925, is a valid and binding obligation of Taxi Co., and that there was a breach of said contract by Taxi Co., (b) fixing the damages of M. Co. at the sum of Two Hundred and Fifty Thousand Dollars ($250,000), and (c) causing an unconditional judgment to be rendered against Taxi Co. therefor, but
1992 with restrictions as to the enforcement of execution as provided in paragraph 25 hereof.

3: That Taxi Co. will cause its attorneys, simultaneously with the execution of this agreement, to execute stipulations dismissing with prejudice its bill for review filed in the Superior Court of Cook County, in the case entitled Checker Taxi Company vs. Checker Cab Manufacturing Corporation No. 421997, without costs, it being understood and agreed that all costs heretofore advanced by the parties shall be borne by the parties advancing said costs, and all costs not heretofore advanced shall be borne equally by Taxi Co. and M. Co.

4: That Taxi Co. will cause its attorneys, simultaneously with the execution of this agreement, to execute a stipulation ordering the Clerk of the United States District Court, for the Northern District of Illinois, Eastern Division, to pay over to the attorneys for M. Co. the funds deposited with said Clerk pursuant to order of date October 9, 1928, entered in the case of M. Co. against Taxi Co. in said Court, No. 7726.

5: That Taxi Co., now does, in consideration of the execution of this contract, affirm and ratify the action of Charles L. Mahoney, former attorney for Taxi Co. in consenting to the entry of a decree in the Superior Court of Cook County, on February 26, 1925, in the case of Checker Taxi Company vs. Checker Cab Manufacturing Corporation, *et al*, No. 396939.

6: That Taxi Co. does by this instrument consent and agree that M. Co. and its predecessors, Checker Cab Manufacturing Corporation, of Delaware and Commonwealth Motors Company have heretofore rightfully used and M. Co. now is rightfully using said Checker Emblems and the word "Checker" and all combinations thereof of technical trade-marks upon taxicabs manufactured and sold by them in such a manner as not to interfere with the rightful use of said emblems and marks as service marks by the Taxi

Co. in the Counties of Cook, Lake and DuPage in the State of Illinois, and the Counties of Lake, Porter, LaPorte, Stark and Pulaski in the State of Indiana, which Taxi Co. agrees is the territory and the only territory within which it has been conducting its business of operating taxicabs for hire. Said M. Co. agrees that at no time hereafter, whether during the term of this contract or after its expiration, it shall have the right to use said Checker emblem, . . . either as a manufacturer's mark or otherwise, or affirmatively permit the use thereof by anyone other than Taxi Co., in said Counties of Cook, Lake and Dupage in the State of Illinois, and Lake, Porter, Laporte, Stark and Pulaski Counties in the State of Indiana; meaning and intending hereby that said Taxi Co., its successors and assigns shall have the sole and exclusive right thereof in said territory in the operation of taxicabs.

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1993 (B) Covenants Relating to Contract for Purchase and Sale of Cabs:

8. That Sales Co. will sell, or cause to be sold through its duly authorized agents or representatives, to Taxi Co. and/or its driver-stockholders and/or its drivers, Checker cabs upon the terms and conditions, and subject to the provisions of paragraph 9 hereof, under the specifications set forth in Schedule A hereto annexed, during the period of this agreement, for the price of Two Thousand Three Hundred and Fifty Dollars ($2,350) each F. O. B Chicago, Illinois subject to the following:

• • •

10. Each order for taxicabs given by Taxi Co. and/or its driver-stockholders and/or drivers to Sales Co., or its duly authorized agents or representatives, shall be in writing and shall be accompanied by a down payment of not less than Five Hundred Seventy-five Dollars ($575.00) and the balance of the purchase price shall be represented by notes of the purchaser maturing in successive equal weekly installments as near as may be, covering a period not exceeding seventy-eight (78) weeks, and such notes shall bear interest at the rate of six per centum (6%) per annum until paid and shall be secured by chattel mortgage on the taxicab so purchased, in substantially the form set forth in Schedule B hereto annexed, . . .

• • •

12. All prices herein agreed upon shall be construed to be net prices to Sales Co. or its duly authorized agents and representatives, and in the event that any portion of the purchase price shall be represented by deferred payments of the purchaser, then in that event, there shall be added to the purchase price a finance charge in accordance with the following schedule, which shall include Fire and Theft Insurance.

For payments maturing in equal weekly installments, as near as may be, after date:

7	months	or	less	$5.12	per	hundred	dollars
8	"	"	"	5.57	"	"	"
9	"	"	"	5.97	"	"	"
10	"	"	"	6.37	"	"	"
11	"	"	"	6.72	"	"	"
12	"	"	"	7.02	"	"	"
13	"	"	"	7.40	"	"	"
14	"	"	"	7.96	"	"	"
15	"	"	"	8.49	"	"	"
16	"	"	"	8.96	"	"	"
17	"	"	"	9.49	"	"	"
18	"	"	"	9.96	"	"	"

Such finance charge shall be added to the face amount of the notes in approximately equal amounts. Interest at the rate of six per centum (6%) per annum shall be paid on the unpaid installments.

1994 13. Sales Co., or its duly authorized agents and/or representatives, agree that it will allow a discount of twenty per centum (20%) from its repair parts price list on all repair and replacement parts purchased by the Taxi Co. and/or its driver-stockholders and/or drivers from Sales Co., or the service station to be established and maintained by Sales Co., or its duly authorized agents or representatives, as herein provided, and Taxi Co. will use its best efforts to cause to be purchased by it and/or its said driver-stockholders and/or its said drivers, all repair and replacement parts from Sales Co., or from the service station to be established and maintained by Sales Co., or its duly authorized agents or sales representatives, and from no others. The prices on the repair parts price list of Sales Co. shall at no time be any greater than the then current pfices on the list price of M. Co.

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During or before the first week of September of each year, the Taxi Co. shall furnish to the Sales Co., an esti-

mate of its requirements for taxicabs during the months of October, November and December following, and if the Sales Co. shall, during said months of October, November and December, following the furnishing of said estimate fail for any reason to fill orders accompanied by deposits as in this contract provided to the amount of said estimate for the period of ten (10) days during said months of October, November and December, the Taxi Co. and/or its drive-stockholders and/or its drivers shall have the right and privilege to purchase cabs elsewhere during the period of said delay, but the right herein given to purchase such cabs elsewhere shall terminate immediately upon written notice by the Sales Co. of its ability to accept and fill orders at the rate provided in this agreement, and its compliance therewith.

• • •

18. After delivery of taxicabs, and until payment in full of the notes, insurance covering fire, theft and banker's collision shall be maintained and paid, as provided in paragraph 12 hereof, in insurance companies selected or approved by Sales Co., and such insurance shall be made payable to Sales Co. and/or its nominees and/or Taxi Co. and/or its drivers-stockholders and/or its drivers as their interests appear. Taxi Co. shall at all times, until payment in full, use its best efforts and co-operate with its stockholder drivers and/or drivers, to maintain such taxicabs in good and serviceable condition, ordinary wear and tear alone excepted.

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20. The Taxi Co. agrees at all times to co-operate with the Sales Co. in the collection of deferred payments
1995 on cabs and in the event default occurs in the payment of deferred payments on any cab, and such default shall continue for a period of three weeks immediately upon written notice thereof from Sales Co. or its assigns to maintain custody and control of said cab until such default is made good. In case of the failure of the Taxi Co. to maintain custody and control of such cab as herein provided, if the same can by the Taxi Co. with reasonable diligence be found, the Taxi Co. agrees to pay the Sales Co. or its assigns the expense of repossession of said cab not to exceed One Hundred Dollars ($100.00). The Taxi Co. further agrees to promptly notify Sales Co. or its assigns, provided that Taxi Co. shall be advised of such disappearance, in writing of the disappearance or its failure to

locate any cab covered by a chattel mortgage for deferred payments.

21. Taxi Co. declares that the Checker Cab manufactured by M. Co. in accordance with the specifications described in Schedule A (as the same may be changed to conform to modifications and/or improvements as herein provided) and dealt in by Sales Co. be and it hereby is designated and selected as the standard cab of Taxi Co.; and it agrees that it will use its best efforts to develop and promote the commercial use of the Checker Cab in its operating territory during the life of this agreement.

22. Taxi Co. agrees that it will purchase from Sales Co., or its authorized agents or representatives, or cause to be so purchased by its driver-stockholders, and/or drivers, or its controlled, affiliated or subsidiary companies or organizations now or hereafter maintained or created, if any, under the terms and conditions herein set forth, all of the taxicabs which it or they may hereafter require, during the life of this agreement, whether for enlarged operation of taxicabs or for replacement of equipment, including any enlargement of operation or replacement of equipment arising out of the admission to Taxi Co. of new driver-stockholders from time to time. Nothing herein contained shall be construed to require Taxi Co. and/or its driver-stockholders and/or its drivers to order and/or pay for any *specified* number of taxicabs during the term of this agreement of any part thereof.

23. In the event of a default by Taxi Co. in its covenants and agreements to purchase or cause to be purchased all of the taxicabs which it and/or its driver-stockholders and/or its drivers may hereafter require, or in the event of a default by Taxi Co. in the covenants contained in paragraph 27 hereof, and such default shall not have been cured as provided in paragraph 28 hereof, it will pay to Sales Co., the sum of One Million Dollars ($1,000,000.00) in part as and for liquidated damaged hereunder, and in part as additional consideration for the settlement of the litigation provided to be settled in this agreement; which sum, however, is subject to reduction as hereinafter set forth. Taxi Co. represents and warrants that it has
1996 licenses to operate 1,750 taxicabs in the City of Chicago, Illinois, and it estimates that during the term of this agreement it will twice replace its fleet, and in connection with its requirements for such replacing of its fleet it will purchase or cause to be purchased approximately

thirty-five hundred (3,500) taxicabs from Sales Co. Inasmuch as Sales Co. estimates that it will make a profit of at least $286.00 per cab for each cab sold hereunder, it is agreed that said sum of One Million Dollars ($1,000,000.00) shall be reduced by the sum of Two Hundred Eighty-six Dollars ($286.00) for each taxicab purchased hereunder from Sales Co. by Taxi Co. and or its driver-stockholders and/or its drivers. It is understood that said sum of One Million Dollars ($1,000,000.00) as so reduced from time to time does not represent the full damages which may be sustained by Sales Co. but is fixed at a substantially lower sum, partly because of the continuance in force of the aforesaid judgment for Two Hundred Fifty Thousand Dollars ($250,000.00) until this agreement has been fully performed by Taxi Co. Nothing herein contained shall be construed as rendering the Taxi Co. liable for said One Million Dollars ($1,000,000.00) as liquidated damages or any part thereof, provided always, that said Taxi Co. shall have faithfully kept and performed its covenants to purchase or cause to be purchased its whole requirements of cabs as herein provided, and its covenant contained in paragraph 27 hereof.

(C) COVENANTS CHIEFLY BY M. CO.

24. In the event that Taxi Co. desires at any time to dispose of any real estate now owned by it or subsequently acquired by it, M. Co. agrees to cause such real estate to be released from the lien of said judgment in order that Taxi Co. may be permitted to dispose of such real estate.

* * *

25. M. Co. agrees that execution on said judgment for Two Hundred Fifty Thousand Dollars ($250,000.00) to be entered as in paragraph "2" above provided shall not be enforced by it so long as Taxi Co. and/or its driver-stockholders and/or its drivers shall not be in default in the covenants relating to the purchase of cabs from Sales Co. set forth more particularly in paragraph 22 hereof, or shall not be in default of its covenants and agreements contained in paragraph 27 hereof, and on the expiration of this agreement, to-wit on the 5th day of February 1935, in the event no default under paragraphs 22 and 27 of this agreement by Taxi Co. and/or its drive-stockholders and/or its drivers shall have occurred, except such as shall have been cured as herein provided, or in the event of a default by Sales Co. as more fully described in paragraph 16 hereof, not waived by Taxi Co. or cured as herein pro-

vided, M. Co. will satisfy said judgment of record; and M. Co., simultaneously with the delivery of this agreement, agrees that it will deposit with Judge James H. Wilkerson an instrument satisfying said judgment, 1997 in form satisfactory to counsel for Taxi Co., to be held by him subject to and upon the terms of a letter of instructions attached to this agreement as Schedule D. Such letter of instructions shall state that in the absence of notice to the depositary of the existence of default, such satisfaction shall be filed upon the termination of this agreement.

(D) Covenants Chiefly by Taxi Co.

26. Taxi Co. covenants and agrees, for itself, its driver-stockholders and it drivers, that for the purpose of resisting the issuance and levy of execution under said judgment of Two Hundred Fifty Thousand Dollars ($250,000.00) herein provided for, M. Co. shall be deemed to have defaulted under this contract only if Sales Co. shall have defaulted in the delivery of taxicabs to Taxi Co. and/or its driver-stockholders and/or its drivers pursuant to the provisions of paragraph 16 hereof and such default shall not have been waived by Taxi Co. or cured as provided in paragraph 16.

27. Taxi Co. agrees that during the life of this agreement it will not purchase, lease or otherwise acquire or use or permit the use of taxicab service in its organization, by itself and/or its driver-stockholders and/or its drivers and/or its controlled, affiliated or subsidiary companies or organizations now or hereafter maintained or created, if any, directly or indirectly, any taxicabs other than the taxicabs manufactured by M. Co. and purchased from Sales Co., always excepting the cabs now in the service of Taxi Co., the schedule of which is hereto annexed and made a part hereof as Schedule C, and that Taxi Co. will not make or permit to be made during the life of this agreement, any agreement or understanding for the purchase, lease or other acquisition of taxicabs from any person, firm or corporation other than Sales Co. and that it will not during the term of this agreement manufacture or assemble any taxicabs or parts for use in its organization, by itself and/or its driver-stockholders and/or its drivers and/or its controlled, affiliated or subsidiary companies or organizations now or hereafter maintained or created, if any, and that it will not admit to membership as a stockholder or driver or employee, or license for the operation of taxicabs, or

issue or transfer shares of its stock or memberships in Taxi Co. or in any controlled, affiliated or subsidiary company or organization, directly or indirectly, to any person or persons owning or operating a taxicab other than a cab manufactured by M. Co. and purchased from Sales Co., except those cabs or cars described in Schedule C.

28. Taxi Co. agrees that default by it under this agreement shall have occurred when and as Taxi Co. and/or its driver-stockholders and or its drivers, with its knowledge and consent, shall purchase, directly or indirectly, taxicabs from any person, firm or corporation other than Sales Co. and/or shall operate for hire, directly or indirectly, taxicabs manufactured by any person, firm or corporation other than M. Co. during the period of this agreement (always except the cabs now in the service of Taxi Co., a schedule of which is hereto annexed and made a part hereof as Schedule C) and/or shall default in the performance of any of the covenants and agreements contained in paragraphs 22 and 27 hereof. It is understood that a default by Taxi Co. shall not be deemed a default for the purpose of this paragraph 28 unless M. Co. or Sales Co. shall have given notice thereof to Taxi Co. and Taxi Co. shall have failed to cure such default or cause the same to have been cured within thirty (30) days after the giving of such notice, and Sales Co. thereupon may elect to discontinue sales of taxicabs and repair parts to Taxi Co. hereunder.

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(D-2) Covenants by M. Co. With Reference to DeLuxe Motor Cab Co. an Illinois Corporation:

29. M. Co. agrees to cause DeLuxe Motor Cab Co., an Illinois corporation operating a fleet of taxicabs in the City of Chicago, to execute and deliver to the Taxi Co., within thirty (30) days from the date of this contract, a contract substantially as follows:

"In consideration of One Dollar ($1.00) and other good and valuable considerations in hand paid to the undersigned, DeLuxe Motor Cab Co., an Illinois corporation, by Checker Cab Manufacturing Corporation, a New Jersey corporation, and Checker Taxi Company, an Illinois corporation, the receipt whereof is hereby acknowledged, the undersigned, DeLuxe Motor Cab Co., agrees to not purchase or otherwise acquire for use in its fleet of cabs in the City of Chicago, for a period of five (5) years from February 5th, 1930, any automobiles or taxicabs other than taxicabs manu-

factured by Checker Cab Manufacturing Corporation, a New Jersey corporation. In Testimony Whereof, DeLuxe Motor Cab Co., has hereunto set its hand and seal, by authority of its Board of Directors, this .... day of ....., 1930.

DeLuxe Motor Cab Co.
By .....
President

Attest
.....
Secretary"

The M. Co. guarantees the faithful performance of said contract to be executed by the DeLuxe Motor Cab Co., and further agrees that if the said contract is not executed by said DeLuxe Motor Cab Co. within thirty (30) days from this date or if breached with the knowledge of M. Co. or upon thirty (30) days notice to M. Co. from Taxi Co. of any breach thereof, provided the breach is not cured within said thirty (30) days, this contract shall be terminated at the option of the Taxi Co.

1999 M. Co. further agrees that, during the term of this agreement, it will not, without the written consent of Taxi Co., directly or indirectly form or permit the formation of or become associated with or interested in any corporation, association or other body for the purpose of conducting the business of operating taxicabs for hire in the City of Chicago, Illinois, in competition with Taxi Co., unless such corporation, association or other body shall agree, and file such agreement with Taxi Co., prior to the commencement of its operations, that prior to the fifth day of February, 1935, it will not purchase any cabs or admit to its organization any person, owning or operating a cab, other than a taxicab manufactured and sold by M. Co., and if this covenant of M. Co. is breached, upon thirty (30) days notice to M. Co. from Taxi Co. of such breach, this contract shall be terminated at the option of Taxi Co., provided the breach is not cured within said thirty (30) days.

(E) Mutual Covenants by Taxi Co., M. Co. and Sales Co.

30. It is mutually agreed by the parties hereto:

(a) That the contract between Taxi Co. and M. Co. of date February 24, 1925, hereinbefore in this instrument referred to, be and the same hereby is abrogated, and Taxi Co. and M. Co., for themselves and their legal representa-

tives, hereby release and absolutely and forever discharge the other of any from all claims and demands, actions and causes of action of every name or nature, so that neither of them shall have any claim on the other, directly or indirectly, or any contract or supposed liability of thing undertaken to be done or omitted to be done, from the beginning of the world to this date, excepting only therefrom the covenants and agreements in this instrument contained; and Taxi Co. hereby releases the Checker Cab Manufacturing Corporation, of Delaware, Morris Markin, J. E. Campbell, Eugene L. Garey, Paul C. L'Amoreaux, L. A. Stebbins, J. E. Hurtubise, J. C. Byrne, Commonwealth Motors Company and Taxicab Company of Illinois (heretofore named as defendants by Taxi Co. in litigation, disputes and controversies existing between the parties to this agreement and their predecessors) of and from all claims and demands, actions and causes of action of every name or nature, from the beginning of the world to this date.

(b) That this contract shall continue for a period of five (5) years from and after the date hereof, expiring on the 5th day of February, 1935.

* * *

35. M. Co. hereby unconditionally guarantees to Taxi Co. the prompt and faithful performance by Sales Co. of all the terms and provisions of this agreement to be performed by Sales Co. as herein set forth, and M. Co. agrees that, in the event of a default by Sales Co. not waived by Taxi Co. or cured as provided in paragraph 16 hereof, the judgment provided for in paragraph 2 hereof shall be forthwith satisfied of record as provided in this agreement.

2000 *Gov. Ex. 89 (June 18, 1934. Minutes of Meeting of Board of Directors of CCM held at Office of Pruitt and Grealis, 105 West Adams St. Chicago—)*

There were present at the meeting: Morris Markin
L. B. Manning
R. E. Oakland
W. H. Beal,

being a majority of the Directors of the corporation.

Mr. Markin acted as chairman and Mr. Manning as secretary of the meeting.

* * *

Mr. Markin then stated that this corporation's subsidiary, Fisk Discount Corporation, had required an appeal bond . . .

* * *

Mr. Markin then called attention to the claim of the Checker Cab Manufacturing Corporation vs. Stebbins & L'Amoreaux on account of $5,000.00 advanced to said law firm while they were handling the suit of this corporation vs. Checker Taxi Company, and stated that while there had been some doubt about the liability of the law firm to repay this money in view of the outcome of the litigation and the settlement made, as reflected in the minutes of meetings of the Directors of this corporation held in January, 1930, the account had always been carried on the books of the corporation as an account receivable due from Stebbins & L'Amoreaux; that Mr. L'Amoreaux was deceased and that the representatives of his estate, as well as Mr. Stebbins, had denied any obligation on their part to pay said $5,000.00; that recently he, Mr. Markin, had acquired from the L'Amoreaux Estate all of its interest in the capital stock of Cab Sales and Parts Corporation and in connection therewith had agreed to protect the estate and Mr. Stebbins against further claims of Checker Cab Manufacturing Corporation for said $5,000.00 and to see that said claim was settled in full, the firm of Stebbins & L'Amoreaux and Mr. L'Amoreaux's estate likewise to release Checker Cab Manufacturing Corporation from all claims and demands of any kind and nature whatsoever, including any claim to any collections hereafter made on the $250,000 judgment which said attorneys obtained against Checker Taxi Company; and that in view of the existing situation and the settlement referred to, he was now offering to pay to the Checker Cab Manufacturing Corporation such sum as its Directors considered reasonable and proper in settlement of said claims vs. Stebbins & L'Amoreaux and the L'Amoreaux estate.

Mr. Manning then stated that he had discussed this situation with Mr. Pruitt, the corporation's General Counsel, that Mr. Pruitt was of the opinion that the collection of the claim from the L'Amoreaux estate or from the
2001 surviving partner of Stebbins & L'Amoreaux, Mr. Stebbins, would have been exceedingly difficult in view of the denial of liability on the part of the estate and the probable inability of Mr. Stebbins to pay the claim even if same were proved up in court, and that under the circumstances Mr. Pruitt had recommended that this claim be settled for $2500.00, which amount he understood Mr. Markin was willing to pay.

After general discussion, upon motion offered, seconded and carried by the vote of all of the Directors present except Mr. Markin, who did not vote upon the subject, it was

RESOLVED that this corporation accept from Morris Markin the sum of Twenty-five Hundred ($2500.00) Dollars in full settlement and discharge of all claims of this corporation against the estate of Paul C. L'Amoreaux and against the law firm of Stebbins & L'Amoreaux or any of the partners therein, it being further understood that in connection with such settlement the L'Amoreaux estate and the partners in the firm of Stebbins & L'Amoreaux should also release and discharge all claims of every kind and nature against this corporation and its various subsidiary, affiliated and associated companies.

Gov. Ex. 90 (February 5, 1930. Minutes of Directors Meeting of Cab Sales—)

Present: A. C. Flynn
K. Clay
Grace V. Hanrahan

being all of the directors of said company.

A. C. Flynn, the President, called the meeting to order, and K. Clay, the Secretary, recorded the minutes thereof.

Whereupon, on motion duly made and seconded, the following resolutions were duly and unanimously adopted:

WHEREAS, There has been presented to this meeting of the Board of Directors, a proposed contract between Checker Cab Manufacturing Corporation, a New Jersey corporation, which corporation is engaged in the manufacture of taxicabs, and this corporation, dealing with and covering the matter of purchase by this company of cabs of Model K, Checker taxicab, manufactured by Checker Cab Manufacturing Corporation, said contract to be for a period of five (5) years from February 5th, 1930, and

WHEREAS, it is deemed for the best interests of this corporation that this corporation enter into said contract with Checker Cab Manufacturing Corporation,

NOW, THEREFORE, be it

RESOLVED: That the proposed contract, in words and figures as follows:

2002 "Memorandum of Agreement made and entered into this 5th day of February, 1930, by and between CHECKER CAB MANUFACTURING CORPORATION, a New Jersey corporation, (hereinafter referred to as the 'Corporation'), party of the first part, and CAB SALES AND PARTS CORPORATION, a Delaware corporation, (hereinafter referred to as the 'Sales Company'), party of the second part,

WITNESSETH:

The Corporation manufactures taxicabs and taxicab bodies in the City of Kalamazoo, Michigan, and its principal product is the Model K Checker taxicab. Sales Company is engaged in the business of selling taxicabs, automobile equipment and repair parts in the City of Chicago, Illinois, and elsewhere and is also engaged in the business of conducting service stations and repair shops for the purpose of repairing and servicing, among others the taxicabs and automobiles it sells. The Corporation is desirous of having the Sales Company act as its representative for the purpose of selling and distributing its taxicabs for a period of five (5) years from the date of this agreement, and the Sales Company is desirous of acting in such capacity for the sale and distribution of the products of the Corporation for such period, under the terms and conditions hereinafter set forth:

NOW, THEREFORE, in consideration of the premises and the sum of One Dollar ($1.00) by each of the parties hereto to the other in hand paid, receipt whereof is hereby acknowledged, the parties hereto agree as follows:

FIRST: The Corporation agrees to appoint and hereby does appoint the Sales Company its representative for the purpose of selling and distributing its taxicabs in the States of Illinois, Indiana and Wisconsin for a period of five (5) years from the date hereof and the Sales Company agrees to accept and hereby does accept said appointment as such representative for the purpose of selling and distributing the products of the Corporation and agrees to use its best efforts to promote the sales and distribution of the taxicabs and other products manufactured or dealt in by the Corporation . . . All taxicabs shall be sold outright to the Sales Company at the price of One Thousand nine hundred six dollars ($1,900) per cab without tires, f.o.b. Kalamazoo, Michigan. . . . By the term 'taxicab' is meant a cab, standard model, as from time to time manufactured or produced by the Corporation for use in the City of Chicago, Illinois, and having the specifications now published by the Corporation with respect to the Model K Checker taxicab of the four door town car type. . . . The Corporation agrees to discount or cause to be discounted all paper of customers of the Sales Company

which is signed or endorsed by persons whose credit is satisfactory, and is also endorsed without recourse
2003 by the Sales Company, promptly upon the request of the Sales Company from time to time and in connection therewith the Corporation guarantees that any finance charge payable by the Sales Company in connection with such discounting, shall not be in excess of the then current rates published in the City of New York, New York, with respect to taxicab paper . . .

• • •

THIRD: The Sales Company agrees that at no time hereafter, whether during the term of this agreement or after its expiration, shall it have the right to use the Checker emblem, consisting of a field of checkers with a circle containing the words 'Checker' or 'Checker Cab Company' or 'Checker Taxi Co.' or other words of similar import on the door of the taxicab, and a border of three rows of black and white checkers running around the tonneau of the cab or any modification or simulation thereof, either as a distributor's mark, seller's mark, manufacturer's mark or otherwise or affirmatively permit the use thereof by anyone other than Checker Taxi Co., an Illinois corporation, in the counties of Cook, Lake and Dupage in the State of Illinois and in the counties of Lake, Porter, LaPorte, Starke and Pulaski in the State of Indiana, inasmuch as said Checker Taxi Co. and its successors and assigns have the sole and exclusive right thereof in said territory.

FOURTH: It is understood and agreed that although the Sales Company is hereby appointed the representative of the Corporation in the States of Indiana, Wisconsin and Illinois, nothing herein contained shall be deemed to mean or be construed as meaning that such appointment is an exclusive one except as to sales to Checker Taxi Company, Chicago, or affects in any way or cancels any existing arrangements of the Corporation with others for the sale and distribution of its products, and the Corporation reserves unto itself and its successors and assigns the right to appoint agents, representatives and/or distributors other than the Sales Company for the sale and distribution of its products in the States of Indiana, Wisconsin and Illinois.

FIFTH: The Corporation may, at any time upon thirty (30) days notice addressed to the Sales Company, c/o Stebbins, L'Amoreaux & Hurtubise, Esqs.,

208 South La Salle Street, Chicago, Illinois, cancel this agreement, but the Corporation agrees that, in the event of any such cancellation, it will nevertheless continue to furnish taxicabs to the Sales Company as above provided for the purpose, but for the sole purpose of permitting the Sales Company to comply with its covenants and agreement contained in a certain contract dated February 5, 1930, between the parties hereto and Checker Taxi Co., an Illinois corporation, which agreement and the terms and provisions thereof is hereby
2004 incorporated herein by reference and the parties hereto agree with each other to perform the provisions therein set forth to be performed by them respectively, and the Sales Company agrees that it will purchase its requirements for such purpose from the Corporation as herein provided. Nothing herein contained, however, shall be deemed to mean that the Sales Company cannot sell and dispose of taxicabs purchased from the Corporation hereunder to parties other than said Checker Taxi Co. in the event that this agreement is not cancelled as provided in this paragraph FIFTH as it is the intent and meaning of this agreement that the Sales Company will use its best efforts to promote the sales and distribution of Checker taxicabs throughout the States of Illinois, Wisconsin and Indiana.

SIXTH: In the event that said Checker Taxi Co. shall default under said contract dated February 5, 1930, and in the event that the Sales Company shall collect from said Checker Taxi Co. all or any part of the liquidated damages therein provided for in the event of a default by Checker Taxi Co., the Sales Company agrees to promptly pay over and deliver to the Corporation a sum equal to fifty per cent. (50%) of all of said liquidated damages collected by it, inasmuch as it is understood and agreed that under and pursuant to said contract dated February 5, 1930, said liquidated damages therein provided for represent in part the consideration accruing to the Corporation for the execution by it of said contract, and it is stipulated and agreed that the Corporation has an interest therein to the extent aforesaid. The Sales Company agrees that in no event will it set off against the claim of the Corporation with respect to said fifty per cent. (50%) of all of said liquidated damages any counterclaim, set-off or other claim, lien or demand that the Sales

Company may have against the Corporation, but the Sales Company will promptly, as hereinbefore provided, pay over a sum equal to said fifty per cent. (50%) of all of said liquidated damages collected under said contract dated February 5, 1930, without asserting, with respect to said sum, any right, set-off, counterclaim, demand, lien or claim it may have or it may allege to have against the Corporation. It is further stipulated and agreed that in the event the Sales Company asserts its claim against said Checker Taxi Co. for liquidated damages under and pursuant to the terms of said contract dated February 5, 1930, all proceedings, actions and steps taken by the Sales Company in connection therewith shall be under the joint supervision of the Corporation and the Sales Company and of their respective counsel. The Sales Company agrees that any time upon the written request of the Corporation it will execute an appropriate instrument in form satisfactory to the Corporation wherein Sales Company shall transfer and assign to the Corporation
2005 50% of its rights to such liquidated damages and in addition thereto such instrument shall likewise provide that the Sales Company shall declare itself trustee for the benefit of the Corporation of such 50% of such liquidated damages.

SEVENTH: It is understood and agreed that the Corporation shall in no way be responsible for any loss sustained by the Sales Company in any manner in the conduct of its business, whether in connection with resales of cabs taken by the Sales Company by way of trade-in allowances with its customers or otherwise, it being the intent and meaning of this agreement that the Sales Company shall bear all losses incurred in connection with the transaction of its business and that the Corporation shall in no event be liable therefor.

EIGHTH: The Corporation agrees to supply the Sales Company and the Sales Company agrees to purchase from the Corporation at list price less the customary discount allowed by the Corporation to its distributors (which, however, shall in no event be less than twenty-five per cent. (25%) all the repair and replacement parts and supplies dealt in by the Corporation, required by the Sales Company in the operation of its business, and the Corporation agrees to supply the Sales Company with all said repair and replacement parts and

supplies contained in the lists published by it from time to time promptly upon receipt of orders thereof against payment therefor of said purchase price.

* * *

presented to this meeting between this Company and Checker Cab Manufacturing Corporation be and the same is approved and adopted. . . .

Gov. Ex. 91: (April 19, 1935. Minutes of Directors' Meeting of Checker—)

Present: M. M. Sokoll
George McDonald
A. C. Flynn
Jos. McMath
Julius Jesmer

being and constituting the entire Board of Directors of this Company.

* * *

He further advised the meeting that on February 5th, 1930, this company entered into a contract with the Checker Cab Manufacturing Corporation and the Cab Sales & Parts Corporation, whereby this company agreed to purchase or cause its drivers to purchase from Checker Cab Manufacturing Corporation all taxicabs to be used in the service
2006 of Checker Taxi Company for a period of five years from the date of the contract; . . .

The President further advised that he had been approached by Mike Shapiro, operator of the fleet known as the "Shapiro Fleet" and representative of Cab Sales & Parts Corporation, and by a representative of the Checker Cab Manufacturing Corporation, concerning the purchase by Cab Sales of five hundred (500) new taxicabs to be operated by Shapiro in the Checker Taxi Service. They submitted a proposition outlined in a contract, which is in words and figures as follows, to-wit:

MEMORANDUM OF AGREEMENT dated this 19th day of April, 1935, by and between CHECKER TAXI COMPANY, a Delaware corporation, of Chicago, Illinois, hereinafter referred to as "Taxi", CHECKER CAB MANUFACTURING CORPORATION, a New Jersey corporation of Kalamazoo, Michigan, hereinafter referred to as "Checker", and CAB SALES & PARTS CORPORATION, a Delaware corporation, of Chicago, Illinois, hereinafter referred to as "Sales Co.", WITNESSETH:

I. Sales Co. agrees to purchase from Checker for use in Taxi's fleet in Chicago, Illinois and Checker agrees to sell and deliver to Sales Co., subject to the terms of this agreement, five hundred (500) Checker taxicabs without tires, as herein described, at the price of THIRTEEN HUNDRED FIFTY DOLLARS ($1350) each, plus any state and federal excise taxes and or sales taxes, plus a finance charge of FORTY-FIVE DOLLARS ($45) on each such taxicab . . .

* * *

VII. Sales Co. and Taxi further jointly and severally agree that all taxicabs purchased hereafter during a period of five years from this date by Sales Co. or by Taxi, for use in its fleet operations other than taxicabs purchased and owned by individual drivers, shall be purchased from time to time as required from Checker, and in consideration of such agreement and the purchase of five hundred (500) taxicabs at this time as hereinbefore provided, Checker agrees to cancel and forever discharge the indebtedness in the principal amount of ONE HUNDRED EIGHTY-NINE THOUSAND
2007 FOUR HUNDRED THIRTY-FOUR DOLLARS NINETY CENTS ($189,434.90), together with all accrued interest thereon, owing to Checker by Sales Co. and Taxi on account of contingent liabilities arising out of the endorsement of taxicab paper signed by driver owners in Taxi's fleet and now held by Checker's wholly owned subsidiary, Fisk Discount Corporation, and set up on its records as Chicago Operator's Notes. All taxicabs to be purchased by Sales Co. and Taxi during said five year period shall be at the prices currently offered by Checker to its preferred customers considering specifications, terms of sale and other conditions.

VIII. In the event of the bona fide sale of the controlling interest in Sales Co. and Taxi by the present owners thereof, not including any transaction made solely for the purpose of evading the provisions of this agreement, then upon the happening of any such event, the obligation of Sales Co. and Taxi to purchase their requirements of taxicabs from Checker shall terminate three years instead of five years from the date hereof.

Gov. Ex. 92. (Plaintiff's Interrogatory No. 20—)

To Cab Sales and Checker (in so far as you have knowledge). With respect to your denial of certain of the allegations of paragraph 34 of the complaint, state: —

(a) The number of shares of stock of Cab Sales upon its incorporation on or about January 20, 1930;

(b) The name of each buyer from Cab Sales of such stock, the date of sale, and the consideration received therefor by Cab Sales;

(c) The number of taxicabs sold by Cab Sales to Checker, and Checker drivers, during each year from 1929 to 1934, inclusive, the number of such taxicabs purchased or otherwise procured by Cab Sales from CCM, the price paid for each such taxicab by Cab Sales to CCM, and the price at which Cab Sales sold each.

Gov. Ex. 93. (Cab Sales Answer to Plaintiff's Interrogatory No. 20—)

(a) 1,000 shares were authorized, 500 of which were issued on or about April 5, 1930.

(b)

Date	*No. of Shares*	*Buyer*
April 5, 1930	500	Paul C. L'Amoreaux
June 1, 1931	277	La Salle Discount Corp.
June 1, 1931	500	La Salle Discount Corp.

The consideration for each such purchase was cash.

(c) During 1929, no taxicabs were sold by Cab Sales to Checker or drivers of Checker taxicabs, and no taxicabs were purchased by Cab Sales from CCM.

2008 During 1930, about 101 taxicabs were sold by Cab Sales to drivers of Checker taxicabs, all of which were purchased by Cab Sales from CCM. The purchase price on the purchase by Cab Sales from CCM was, generally, $1,980.00 per cab exclusive of finance charges; and the sales price, on the sale by Cab Sales to drivers of Checker taxicabs was, generally, $2,350 per cab exclusive of finance charges. These drivers of Checker taxicabs did not, however, always pay the full amount of the sales price, but defaulted in such payment, and on default their taxicabs were either abandoned or repossessed.

During 1931 about 88 taxicabs were sold by Cab Sales to drivers of Checker taxicabs, all of which were purchased by Cab Sales from CCM. The purchase price on the purchase by Cab Sales from CCM was, generally, $1,565 per cab exclusive of finance charges; and the sales price on the sale by Cab Sales to drivers of Checker taxicabs was, generally, $1,945 exclusive of finance charges. Additionally, during 1931, about 123 taxicabs were repossessed and sold by Cab Sales to drivers of Checker taxicabs, the sales price of which

was generally about $950 per cab exclusive of finance charges. These drivers of Checker taxicabs again did not always pay the full amount of the sales price, but defaulted in such payment, and on such default their taxicabs were either abandoned or repossessed.

During 1932, no taxicabs were purchased by Cab Sales from CCM, but Cab Sales sold about 33 repossessed taxicabs to drivers of Checker taxicabs. The sales price of such repossessed taxicabs was, generally, about $800 per cab. These drivers of Checker taxicabs again did not always pay the full amount of the sales price, but defaulted in such payment, and on such default their taxicabs were either abandoned or repossessed.

During 1933 and 1934, no taxicabs were purchased by Cab Sales from CCM, and none were sold by Cab Sales to drivers of Checker taxicabs.

Gov. Ex. 94. (Checker's Answer to Plaintiff's Interrogatory No. 20—)

(Answer to 20(c) is identical with answer of Cab Sales to same section.)

2009 *Gov't. Ex. 95. (May 13, 1931, Minutes of Stockholders' Meeting of Cab Sales and Parts Corporation.)*

WAIVER OF NOTICE

The undersigned, constituting all of the Stockholders of Cab Sales and Parts Corporation, a Delaware corporation, hereby waive all notice required by law or the By-Laws of the corporation, for the calling and holding of a special meeting of the Stockholders, . . .

• • •

DATED: May 13, 1931.

s/ PAUL C. L'AMOREAUX

The Chairman stated that the meeting had been called for the purposes set forth in said Waiver, and the Secretary read to the meeting the minutes of a special meeting of the Board of Directors, held on this day at the office of the corporation at the hour of ten o'clock A. M.

Thereupon, on motion duly made and seconded, and unanimously carried by the affirmative vote of all the Stockholders of the corporation, the following resolution was adopted:

RESOLVED: That the Stockholders of this corporation hereby consent to, and ratify and approve of, the execution and delivery by this corporation of the contract between this corporation and Benzoline Motor Fuel Co. authorized by the Board of Directors at the special meeting held May 14, 1931.

Thereupon, on motion duly made and seconded, and unanimously carried by the affirmative vote of all the Stockholders of the corporation, the following resolution was adopted:

RESOLVED: That the Stockholders of this corporation hereby consent to, and ratify and approve of the execution and delivery by this corporation of the contract between this corporation and Checker Taxi Company authorized by the Board of Directors at the special meeting held May 14, 1931.

Thereupon, on motion duly made and seconded, and unanimously carried, the following resolution was adopted:

RESOLVED: That all of the Stockholders of this corporation consent to, and ratify and approve of the sale
2010 by this corporation to Benzoline Motor Fuel Co. of an issue of $500,000 principal amount of ten-year 6% collateral Trust Gold Notes, and the execution and delivery of a Collateral Trust Agreement, pledging as security for the payment of principal and interest of said notes 30,525 shares of the capital stock of Checker Taxi Company, and the Benzoline contract and Checker contract, referred to in said Collateral Trust Agreement; all in accordance with the resolutions adopted by the Board of Directors of this corporation at the special meeting held May 14, 1931.

RESOLVED: Further, that the Stockholders of this corporation consent to and ratify, approve and confirm all and singular the action taken by the Board of Directors of this corporation at said meeting held on this day at the hour of 10:00 o'clock A. M.

There being no further business, on motion duly made and seconded, and carried, the meeting adjourned.

s/ G. V. HANRAHAN

A TRUE RECORD:
s/ A. O. FLYNN
Chairman

THIS AGREEMENT made and entered into this ..... day of May, A. D. 1931, by and between Cab Sales and Parts Corporation, a corporation organized and existing under

and by virtue of the laws of the State of Delaware (hereinafter sometimes referred to as "Sales Co."), a party of the first part, and BENZOLINE MOTOR FUEL CO., a corporation organized and existing under and by virtue of the laws of the State of Illinois (hereinafter sometimes referred to as "Benzoline") party of the second part,

WITNESSETH:

WHEREAS, SALES CO. is engaged in the business of selling and dealing in taxicabs and other motor vehicles and automotive repair parts, tires, gasoline and other supplies used and usable in connection with the operation of taxicabs and other motor vehicles, and has entered into a contract to furnish the Checker Taxi Company, for and during the period of ten (10) years, commencing May 16, 1931, all motor fuel, lubricating oil, grease and automobile soaps used or required by Checker Taxi Company, during said period, in the operation and maintenance of the taxicabs and other motor vehicles owned and/or operated by it, a copy of which contract is hereto annexed, marked "Exhibit 1" and by reference thereto incorporated herein and made a part hereof; and

WHEREAS, Sales Co. desires to obtain from Benzoline all motor fuel, lubricating oil, grease and automobile soaps which Sales Co. requires in order to enable it to make the deliveries and fulfill its obligations under the above
2011 mentioned contract between Sales Co. and Checker Taxi Company; and

WHEREAS, Benzoline is willing to supply Sales Co. on the conditions hereinafter stated, with all motor fuel, lubricating oil, grease and automobile soap required by Sales Co. to make the deliveries agreed to be made by it under the terms of said above mentioned contract between Sales Co. and Checker Taxi Company;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements of the parties hereto as hereinafter set forth, and other good and valuable considerations, IT IS AGREED by and between the parties hereto, as follows:

First: Sales Co. agrees to obtain from Benzoline and Benzoline agrees to supply to Sales Co., during the period of ten (10) years commencing May 16, 1931, and ending May 15, 1941, all motor fuel, lubricating oil, grease and automobile soap required by Sales Co. in order to enable it to furnish Checker Taxi Company with all motor fuel, lubricating oil, grease and automobile soap agreed to be fur-

nished by Sales Co. to Checker Taxi Company under said aforementioned agreement, viz: All motor fuel, lubricating oil, grease and automobile soap used or required by Checker Taxi Company in the operation and maintenance of all taxicabs and other motor vehicles owned and/or operated by Checker Taxi Company during said period of ten (10) years.

Second: All motor fuel, lubricating oil, grease and automobile soap so supplied by Benzoline to Sales Co. hereunder shall be delivered by Benzoline to Checker Taxi Company at its garages in the City of Chicago, and the delivery by Benzoline to Checker Taxi Company shall, for the purposes hereof, be deemed a delivery to Sales Co.

Third: Sales Co. agrees to pay to Benzoline for all motor fuel, lubricating oil, grease and automobile soap so supplied and delivered by Benzoline, as herein provided, the following prices:

Motor Fuel—For U. S. Motor Gasoline (58-60 437 end point) delivered during each semi-monthly period, as defined in said above mentioned agreement between Sales Co. and Checker Taxi Company, either

(a) the average of the daily low during such semi-monthly period for U. S. Motor Gasoline f. o. b. Group 3, as shown on Platt's Oilgram, plus freight, from Group 3 to Chicago, plus inspection charges, plus gasoline taxes, plus a handling and delivery charge of five-eights (⅝) cents per gallon; or

(b) the average actual cost to Benzoline during
2012 such semi-monthly period (i. e., the actual average price paid by Benzoline during said semi-monthly period for said gasoline, f.o.b. Group 3, plus freight from Group 3 to Chicago, plus inspection charges,) plus gasoline taxes, plus a handling and delivery charge of seven-eighths (⅞) cents per gallon.

whichever is lower.

Lubricating Oil—Price as fixed from time to time by Benzoline, but in no event in excess of prices paid by Yellow Cab Company or Chicago Cab Company for similar kind, grade and quality.

Grease—Price as fixed from time to time by Benzoline, but in no event in excess of prices paid by Yellow Cab Company or Chicago Cab Company for similar kind, grade and quality.

Automobile Soap—Price as fixed from time to time by Benzoline, but in no event in excess of price paid by Yel-

low Cab Company or Chicago Cab Company for similar kind, grade and quality.

Sales Co. agrees to pay Benzoline, at its office in Chicago, Illinois, for all motor fuel, lubricating oil, grease and automobile soap so supplied and delivered by Benzoline hereunder at the prices above provided for, as follows:

(a) On or before the 20th day of each calendar month for all motor fuel, lubricating oil, grease and automobile soap so supplied and delivered during the first fifteen (15) days of such month; and

(b) On or before the 5th day of each calendar month for all motor fuel, lubricating oil, grease and automobile soap so supplied and delivered during the last half of the preceding calendar month (i. e., from the 16th day to the last day, both inclusive, of such preceding calendar month).

In the event of the failure of Sales Co. to make such payments on the respective due dates as above provided, interest at the rate of 6% per annum shall be charged by Benzoline and paid by Sales Co. on all amounts not paid on the respective due dates as above specified.

Fourth: All motor fuel, lubricating oil, grease and automobile soap so supplied by Benzoline and delivered to Checker Taxi Company pursuant to the terms hereof shall be billed by Benzoline (on behalf of Sales Co.) to Checker Taxi Company, at prices determined and/or fixed as provided in the above mentioned contract between Sales Co. and Checker Taxi Company (the price so fixed by Sales Co. for lubricating oil, grease and automobile soap shall not be less than the prices herein provided to be paid by
2013 Sales Co. for said products respectively, and in the event of the failure of Sales Co. to so fix such prices, Benzoline, on behalf of Sales Co., shall fix the same, which prices so fixed by Benzoline shall be the same respective prices fixed by Benzoline pursuant to Article Third hereof, and Sales Co. agrees that it will, concurrently with the execution hereof, direct said Checker Taxi Company to make payment for said motor fuel, lubricating oil, grease and automobile soap at said prices to Benzoline, which direction shall not be altered or revoked without the written consent of Benzoline. Sales Co. hereby authorizes Benzoline, irrevocably, during the life of this agreement, to collect from Checker Taxi Company for all such motor fuel, lubricating oil, grease and automobile soap, and to apply the amounts so collected to the payment of the amounts pay-

able by Sales Co. pursuant to the provisions of Article Third hereof. The balance, if any, of the moneys so collected shall be paid by Benzoline to or on the order of Sales Co.

• • •

Seventh: Sales Co. shall pay for all products supplied and delivered hereunder without discount or deduction, and if at any time the financial responsibility of Sales Co. and/or Checker Taxi Company shall become impaired or unsatisfactory to Benzoline or, in Benzoline's opinion, inadequate to meet the obligations hereunder, cash payments or satisfactory security may be required. A failure to pay any amount when due may, at the option of Benzoline, terminate this contract as to further deliveries, and no forbearance, course of dealings, or prior payment, shall affect this right of Benzoline.

• • •

Ninth: Sales Co. assumes the payment of any tax or duty now or hereafter imposed by the United States or any state or governmental subdivision thereof, on the products or goods covered by this contract or upon the sale thereof, directly or indirectly, including the fair proportion of any such tax or duty on crude petroleum; and Benzoline, upon payment of such tax or duty, may bill Sales Co. and/or Checker Taxi Company for the amount.

Tenth: This agreement, in each and all its terms, shall inure to and be binding upon the parties hereto, their respective successors and assigns.

Anything hereinbefore contained to the contrary notwithstanding, Sales Co. shall have the right and privilege of pledging and/or assigning or transferring all its right, title and interest in, to and under this agreement, and all of the income, profits and benefit accruing to it hereunder, as security for the payment of any indebtedness now owing or hereafter incurred by Sales Co. or for any other purpose, and in the event of any such pledge or assignment by way of pledge, the pledgee shall not be liable for or subject to any of the obligations of Sales Co. hereunder, but in the event of the sale or other disposition by said pledgee of its rights hereunder pursuant to the terms of such pledge, the transferee of said pledgee shall, for all purposes, be deemed the assignee of Sales Co. hereunder, with like effect as though such transferee were named herein instead of Sales Co.

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Eleventh: It is understood and agreed by and between the parties hereto, that Benzoline shall in no event be in

any way liable or responsible for the collection from Checker Taxi Company for motor fuel, lubricating oil, grease and automobile soap supplied and delivered hereunder, but shall be liable only for such moneys as shall be actually collected by it from said Checker Taxi Company.

Gov't. Ex. 96. (May 14, 1931, Minutes of Directors Meeting of Benzoline)

There were present: S. H. Kesner, and Benjamin Samuels constituting a majority and quorum of the Board of Directors of the corporation.

Mr. S. H. Kesner, the President of the corporation, acted as Chairman of the meeting, and Mr. Benjamin Samuels, the Secretary of the corporation, acted as Secretary thereof.

The Chairman submitted to the meeting draft of proposed contract to be entered into between Cab Sales and Parts Corporation and this corporation, to which was annexed as "Exhibit 1" copy of contract dated May 1, 1931, entered into between Cab Sales and Parts Corporation and Checker Taxi Company, which proposed contract between Cab Sales and Parts Corporation and this corporation, together with Exhibit 1 thereto annexed, was ordered incorporated in the minutes of this meeting . . .

The Chairman stated that said contract was advantageous to this corporation and that it was to the interest of this corporation to enter into the same.

Thereupon, on motion duly made and seconded and by the affirmative vote of all the directors of the cor-
2015 poration present at this meeting, the following resolution was unanimously adopted:

RESOLVED, that this corporation enter into a contract with Cab Sales and Parts Corporation in the form submitted to this meeting, . . .

The Chairman further stated that in order to induce said Cab Sales and Parts Corporation to enter into said contract with this corporation, it is necessary for this corporation to purchase from Cab Sales and Parts Corporation an issue of $500,000 principal amount of Cab Sales and Parts Corporation Ten-Year 6% Collateral Trust Gold Notes dated May 1, 1931, at par plus accrued interest thereon, said notes being issued under and pursuant to and secured by the Collateral Trust Agreement dated May 1, 1931, between Cab Sales and Parts Corporation and Foreman-State Trust and Savings Bank, as Trustee;

The matter was fully considered, and on motion duly made and seconded and by the affirmative vote of all the directors of the corporation present at this meeting, the following resolution was unanimously adopted:

RESOLVED, that this corporation purchase from Cab Sales and Parts Corporation, an issue of $500,000 principal amount of Cab Sales and Parts Corporation Ten-Year 6% Collateral Trust Gold Notes, dated May 1, 1931, at par and accrued interest, and the proper officers of this corporation are hereby authorized and empowered, for and on behalf and in the name of this corporation, to purchase said issue of notes and to pay therefor the sum of $500,000 plus accrued interest to the date of such purchase.

The Chairman stated that this corporation did not have available, cash in sufficient amount to consummate the purchase of said issue of $500,000 principal amount of Cab Sales and Parts Corporation Ten-Year 6% Collateral Trust Gold Notes, and stated that Yellow Cab Company was willing to loan to this corporation all or any part of the amount necessary to enable this corporation to consummate said purchase.

Thereupon, on motion duly made and seconded and by the affirmative vote of all the directors of the corporation present at this meeting, the following resolution was unanimously adopted:

RESOLVED, that this corporation borrow such sum as it may require for the purpose of consummating such purchase, not exceeding in the aggregate $500,000, from Yellow Cab Company, a Maine corporation, . . .

* * *

2016 WE, THE UNDERSIGNED, being all the Directors of Benzoline Motor Fuel Co., an Illinois corporation, DO HEREBY CERTIFY that we waived notice of the above and foregoing meeting and we do hereby ratify, approve, confirm and adopt the above and foregoing minutes and resolutions:

s/ S. H. KOSNER
s/ BENJAMIN SAMUELS
s/ EDMUND S. HIGGINS

Gov't. Ex. 97. (Plaintiff's Interrogatory No. 22.)

To Cab Sales. Did you expend any part of the $500,000 borrowed by you from Benzoline Motor Fuel Co. in May 1931 to purchase, directly or indirectly, stock of Checker?

If so, how much was so spent? If not, state generally for what the money was expended.

Gov't. Ex. 98. (Cab Sales Answer to Plaintiff's Interrogatory No. 22).

Yes. All.

Gov't. Ex. 99. (May 22, 1931, Minutes of Directors' Meeting of CCM.)

Present: Morris Markin, Ralph L. Oakland, Albert F. Jaeckel, John H. Tuttle, Henry Weiss, Jack Polansky being a majority of the Board of Directors and a quorum.

The meeting reconvened pursuant to adjournment.

Mr. Markin, President of the corporation, called the meeting to order and acted as Chairman thereof. Mr. Charles G. Fuller, Secretary of the corporation, being present, acted as Secretary of the meeting and kept the minutes thereof.

• • •

The Chairman then stated that he had been negotiating for the sale of 3,000 rebuilt Model K taxicabs to certain purchasing agents of the Union of Socialistic Soviet Republics (Russia) for the price of $700 each, $100 to be paid in cash upon delivery and the balance quarterly over a period of two years, plus 400 roubles, to be deposited and disbursed in Russia by this corporation. He presented to the meeting a letter outlining the terms of this transaction.

Upon motion duly made and seconded, the following resolutions were unanimously adopted:

RESOLVED that the proposed tranaction for the disposition of 3,000 rebuilt Model K taxicabs to the Union of Socialistic Soviet Republics, as presented to this meeting, be and the same hereby is approved.

• • •

2017 The Chairman then presented to the meeting a form of agreement to be entered into between this corporation and Yellow Cab Company of Chicago, relating to the purchase of 1,000 Model M taxicabs.

Upon motion duly made and seconded, the following resolutions were unanimously adopted.

RESOLVED that the form of agreement presented to this meeting, relating to the sale of 1,000 Model M taxicabs by this corporation to Yellow Cab Company of Chicago, be and the same hereby is in all respects approved . . .

• • •

Upon motion duly made and seconded, the following resolutions were unanimously adopted:

RESOLVED that a special account, to be designated as the "Checker Cab Manufacturing Corporation Special Account No. "A" be opened in Foreman-State National Bank in the City of Chicago, Illinois, which is hereby designated a depository of this corporation for such purpose, and any officer or agent of this corporation is authorized and directed to deposit moneys from time to time in such special account.

FURTHER RESOLVED that all funds deposited in said special account shall be subject to withdrawal, except as hereinafter otherwise provided, only on the check, draft or other order of this corporation, signed by Morris Markin, President, or by Ralph L. Oakland, Treasurer of this corporation, provided the same shall be countersigned by any one of the following named agents of this corporation: Arthur W. Moore, President of Yellow Cab Company of Chicago, and Thomas B. Hogan, S. H. Kesner and Benjamin Samuels, Vice-President of Yellow Cab Company of Chicago or any successor president or any successor or other vice-president of Yellow Cab Company of Chicago.

FURTHER RESOLVED that the designation of the above named agents and the authorization hereby given to the said Foreman-State National Bank to honor checks, drafts and other orders countersigned by said agents or any one of them as aforesaid, be and it hereby is declared to be irrevocable, except by the respective boards of directors of this corporation and Yellow Cab Company of Chicago, any such revocation to be effective only upon the filing of certified copies of resolutions adopted by said boards of directors effecting such revocation with the said Foreman-State National Bank.

FURTHER RESOLVED that notwithstanding anything contained in the foregoing resolutions, all funds deposited in said special account shall likewise be subject to withdrawal on the check, draft or other order of this corporation, signed by E. H. Miller, Vice President, without countersignature, provided such check, draft
2018 or other order of this corporation shall be made payable to the order of Yellow Cab Company of Chicago and shall be for all of the funds then on deposit in said special account.

FURTHER RESOLVED that the designation aforesaid of E. H. Miller, Vice-President, and the authorization given to

the said Foreman-State National Bank to honor the check, draft or other order made payable as above provided and signed by E. H. Miller, be and it hereby is declared to be irrevocable, except by the respective boards of directors of this corporation and Yellow Cab Company of Chicago, any such revocation to be effective only upon the filing of certified copies of resolutions adopted by said boards of directors effecting such revocation with the said Foreman-State National Bank.

FURTHER RESOLVED that an amount equal to any interest payable with respect to the funds at any time and from time to time in said special account by the said Foreman-State National Bank, shall be withdrawn from said special account and paid monthly by said bank to or upon the order of Yellow Cab Company of Chicago, and said bank is hereby authorized to make such withdrawals and such payments as aforesaid, such authorization to be irrevocable, except by the respective boards of directors of this corporation and Yellow Cab Company of Chicago, any such revocation to be effective only upon the filing of certified copies of resolutions adopted by said boards of directors effecting such revocation with the said Foreman-State National Bank.

* * *

The Secretary then called to the attention of the meeting the fact that there was a vacancy in the Board of Directors in the class of directors whose terms expire at the annual meeting of stockholders in the year 1933, and he suggested that the meeting consider the filling of such vacancy.

Mr. M. H. Freimark was then nominated a director of this corporation, to serve until the annual meeting of stockholders in the year 1933 until his successor is chosen and qualifies, to fill such vacancy in the Board of Directors. There were no further nominations.

* * *

The Chairman then stated that interests friendly to this corporation had acquired a controlling interest in the stock of Checker Taxi Co., an Illinois corporation, with which this corporation had a contract for the sale of taxicabs; which contract was secured by the entering of a judgment against said Checker Taxi Co. for the sum of $250,000. He further stated that in view of the change in the con-

trol of Checker Taxi Co. it might be deemed advisable to arrange for the satisfaction of said judgment and take other action to revise the contract between this corporation and Checker Taxi Co. and Cab Sales and Parts Corporation, the third party to the aforesaid contract.

Upon motion duly made and seconded, the following resolution was unanimously adopted:

RESOLVED that the Executive Committee be and it hereby is authorized and directed to analyze the present situation with respect to the relations of this corporation and Checker Taxi Co., with a view to modifying the contract existing between this corporation, Checker Taxi Co. and Cab Sales and Parts Corporation, and the Executive Committee is authorized to take such action and approve such modifications as it may deem advisable, provided, however, that no change in the covenants of Checker Taxi Co. to purchase its taxicab requirements, as set forth in said contract, be made.

• • •

Gov't Ex. 100, (October 17, 1932, Minutes of Directors' Meeting of Benzoline)

There were present: S. H. Kesner, Benjamin Samuels
Rudolph H. Bieze

constituting the entire Board of Directors of the corporation.

Mr. S. H. Kesner, the President of the corporation, acted as Chairman of the meeting, and Mr. Benjamin Samuels, the Secretary of the corporation, acted as Secretary thereof.

• • •

The Chairman stated that this corporation is the owner of all of the issued and outstanding ($500,000 principal amount) of Cab Sales and Parts Corporation Ten-Year 6% Collateral Trust Gold Notes, dated as of May 1, 1931, issued under and secured by a Collateral Trust Agreement dated as of May 1, 1931, between Cab Sales and Parts Corporation and Foreman State Trust and Savings Bank, as Trustee; that the collateral pledged with said Trustee included 30,525 shares of the capital stock of Checker Taxi Company, an Illinois corporation, which corporation was reorganized, and in connection with such reorganization, all of the assets, property, business, effects and good will of said Checker Taxi Company, an Illinois corporation, were trans-

ferred to Checker Taxi Company, a Delaware corporation, which Checker Taxi Company, a Delaware corporation, issued 61,000 shares of its capital stock without par value (of an authorized issue of 75,000 shares) to the holders of the outstanding 61,000 shares of said Checker Taxi Company, an Illinois corporation, pro rata, in accordance with their respective holdings of stock of said Checker Taxi Company, an Illinois corporation, and accordingly, 30,525 shares of stock of Checker Taxi Company, a Delaware corporation, were issued in respect of the 30,525 shares of stock of Checker Taxi Company and Illinois corporation, held by the Trustee under said Collateral Trust Agreement dated as of May 1, 1931, which 30,525 shares of stock of Checker Taxi Company, a Delaware corporation, were, by instrument dated as of January 18, 1932, deposited by Cab Sales and Parts Corporation with the Trustee under said Collateral Trust Agreement, and in connection with said deposit this corporation, by instrument also dated as of January 18, 1932, consented to said Trustee accepting from Cab Sales and Parts Corporation the deposit of said 30,525 shares without par value of the capital stock of Checker Taxi Company, a Delaware corporation, and advised said Trustee that this corporation was satisfied that the security afforded by said Collateral Trust Agreement so dated as of May 1, 1931, would not be impaired or prejudiced by said reorganization of Checker Taxi Company, the issue of the 30,525 shares of stock of said Checker Taxi Company, a Delaware corporation, issued in respect of the 30,525 shares of stock of the Illinois company, held by said Trustee, and the deposit of said 30,525 shares of stock of said Checker Taxi Company, a Delaware corporation, with said Trustee.

The Chairman requested the approval of the action of the officers in executing and delivering to the Trustee said instrument dated as of the 18th day of January, 1932, and on motion duly made, seconded and carried, the action of the officers in executing and delivering said instrument so dated as of January 18, 1932, was ratified, approved and confirmed.

The Chairman further stated that in connection with said reorganization all the right, title and interest of said Checker Taxi Company, an Illinois corporation, in and to that certain gasoline and oil contract dated as of May 1, 1931, between Cab Sales and Parts Corporation and Checker Taxi Company, an Illinois corporation, a copy of which contract

is attached to and made a part of that certain contract dated as of May 1, 1931, between Cab Sales and Parts Corporation and this corporation, was assigned to Checker Taxi Company, a Delaware corporation, by instrument of assignment dated as of January 12, 1932, in and by which instrument said Checker Taxi Company, a Delaware corporation, assumed and agreed to keep, perform, pay and discharge all of the covenants, agreements, conditions, undertakings, liabilities and obligations in said agreement between Cab Sales and Parts Corporation and Checker Taxi Company, an Illinois corporation, dated as of May 1, 1931, contained, on the part of said Illinois corporation to be kept, performed, paid and discharged; and that this corporation, as the holder of all the notes issued under the Collateral Trust Agreement dated as of May 1, 1931, authorized the Trustee, as pledgee of all the right, title and interest of Cab Sales and Parts Corporation in and to said contract with Checker Taxi Company above referred to, to consent to said assignment.

2021

The Chairman further stated that in connection with the assignment of said contract by said Checker Taxi Company, an Illinois corporation, to Checker Taxi Company, a Delaware corporation, it was necessary to amend the contract between Cab Sales and Parts Corporation and this corporation, dated as of May 1, 1931, so as to provide that wherever in said contract reference is made to Checker Taxi Company, such reference shall, wherever the facts and context so permit, be deemed and construed to refer to, include and mean, Checker Taxi Company, a Delaware corporation.

The matter was fully considered, and on motion duly made, seconded and carried, the following resolution was adopted:

RESOLVED, that the action taken by the officers of this corporation, for and on behalf and in the name of this corporation, in authorizing the Trustee under the Collateral Trust Agreement dated as of May 1, 1931, to consent to the assignment by Checker Taxi Company, an Illinois corporation, to Checker Taxi Company, a Delaware corporation, of all the right, title and interest of said Illinois corporation, in, to, and under the agreement dated as of May 1, 1931, between Cab Sales and Parts Corporation and said Illinois corporation, be and the same hereby is ratified, approved and confirmed.

* * *

The Chairman further stated that Foreman-State Trust and Savings Bank has resigned as Trustee under the Collateral Trust Agreement dated as of May 1, 1931, such resignation to take effect on November 10, 1932, unless a successor-Trustee shall have been previously appointed by the note-holders, in the manner in said Collateral Trust Agreement provided.

The matter of the appointing of a successor-Trustee was then considered, and on motion duly made and seconded and by the affirmative vote of all the directors of the corporation present at this meeting, the following preambles and resolution were unanimously adopted:

WHEREAS, the Cab Sales and Parts Corporation did, under date of May 1, 1931, execute and deliver its
2022 collateral Trust Agreement to Foreman-State Trust and Savings Bank, as Trustee, for the security of an issue of Ten Year Six Percent Collateral Trust Gold Notes of the Cab Sales and Parts Corporations,

• • •

NOW, THEREFORE, be it and it is thereby RESOLVED, that the First Union Trust and Savings Bank be and it is hereby appointed Successor Trustee under said Collateral Trust Agreement, . . .

2022A *Gov. Ex. 101 (October 15 1932. Letter from L'Amoreaux, President of Cab Sales to Waverly—)*

[Handwritten notation made by Secretary of Waverly on face of letter states: "Copy of Offer Submitted to Meeting of Board of Directors of The Waverly Corporation held October 21, 1932."]

The undersigned, CAB SALES AND PARTS CORPORATION, a Delaware corporation, hereby offers to sell to you $200,000 aggregate principal amount of its 6% Collateral Trust Sinking Fund Gold Notes (of an authorized issue of $200,000), at the face amount of said notes plus accrued interest from October 1, 1932, said notes in temporary and definite form to be issued and delivered to you as soon as practicable and in any event on or before November 1, 1932. Said notes are to be dated as of October 1, 1932, to become due October 1, 1942, and are to be issued under and pursuant to an Indenture to be dated as of October 1, 1932, between the undersigned and First Union Trust and Savings Bank, as Trustee, substantially in the form of the Collateral Trust Agreement entered into between the

undersigned and Foreman State Trust and Savings Bank, dated as of May 1, 1931, securing an issue of $500,000 principal amount of Ten-Year 6% Collateral Trust Gold Notes of the undersigned, with such changes and additions, if any, as shall be agreed upon by your attorneys and the attorneys for the undersigned; said notes to be secured by the pledge with said First Union Trust and Savings Bank, as Trustee under said Indenture to be dated as of October 1, 1932, of the following:

(a) 29,100 shares of the capital stock without par value of Checker Taxi Company, a Delaware corporation, (a taxicab operating company) having an authorized capital stock of 75,000 shares, of which 61,000 shares are issued and outstanding.

(b) All the right, title and interests (but not the obligations) of the undersigned in, to and under all the income moneys, profits and benefits payable to the undersigned under an agreement made July 19, 1932, between the undersigned and Checker Taxi Company, covering certain cabs and drivers formerly operating in the fleet of the Chicago Cab Company and known as the Chicago Cab contract.

(c) 30,525 additional shares of the capital stock of said Checker Taxi Company, subject only to the lien of a
2023 certain collateral trust agreement dated May 1, 1931, between the undersigned and the Foreman-State Trust & Savings Bank, Trustee, securing an aggregate principal amount of $500,000 of 10 year 6% collateral trust gold notes of the undersigned;

(d) All the right, title and interest (but not the obligations) of the undersigned, in, to and under and all the income, profits and benefits accruing to the undersigned under a certain contract dated as of May 1, 1931, by and between the undersigned and Benzoline Motor Fuel Company, an Illinois corporation, subject only to the lien of said collateral trust agreement, dated as of May 1, 1931, hereinabove in paragraph (c) referred to.

(e) All the right, title and interest (but not the obligations of the undersigned), in and to and under all of the income, profits and benefits accruing to the undersigned under a certain contract dated as of May 1, 1931, between the undersigned and Checker Taxi Company, under the terms of which Checker Taxi Company has agreed to purchase gasoline and other products from the undersigned on the terms therein stated, subject however, to the lien

of said collateral trust agreement, dated as of May 1, 1931, described in paragraph (c) above.

The sinking fund provisions of the trust indenture securing said notes hereby offered will provide for redemption of said notes as follows:

On or before Oct. 1st	*Principal Amount of notes to be redeemed*
1933	$ 30,000
1934	35,000
1935	35,000
1936	30,000
1937	20,000
1938	20,000
1939	15,000
1940	5,000
1941	5,000
1942	5,000
Total	$200,000

We believe that the moneys to be realized from the Chicago Cab contract pledged will be more than sufficient for the sinking fund requirements. The contract has approximately four years and ten months unexpired life, and by its terms the Checker Taxi Company will pay to the undersigned one-half of all of the moneys received by them from the driver personnel owning the cabs, acquired in excess of $25 per cab per month. Each owner driver pays to the Checker Taxi Company for single shift operation $55 per month; for double shift operation $75 per month. The average number of cars operated in single shift is about 50% of the whole. There now remains in its fleet of 2024 the cabs acquired by Checker Taxi Company, 211 at this date, so that the income to this company should approximate one-half of $40 per cab per month—a gross of $4,220 monthly, or $50,640 per annum. Said Chicago Cab contract provides that the Checker Taxi Company has the right and option to terminate the same at any time after July 19, 1933, by paying the sum of $100,000. In the event of such termination said $100,000 is to be paid into the sinking fund and used for the redemption of the 6% Collateral Trust Sinking Fund Gold Notes.

Due to abnormal business conditions existing in the last year and to two unusually mild winters, the number of cabs in the Checker Taxi fleet is at the lowest point for many years past, and consequently our profits from the sale of cabs, parts and gasoline are likewise at a low ebb. We firm-

ly believe that in the event we have normal winter weather during that season approaching, our sales and general profits will increase to a point that substantial surplus will be left in excess of the sinking fund requirement of our ten year collateral trust agreement, dated May 1, 1931, which such profits will be available for the sinking fund of the issue hereby offered you.

We further anticipate that public demand for taxicab service will greatly increase during the following year because of Chicago World's Fair, and that we will not experience the usual and seasonal fall off in business during the summer months of 1933. We feel that driver personnel will be substantially increased during that period and that as a result, substantial general earnings will also be available for the sinking fund requirements under the trust agreement securing the notes hereby offered you.

The proceeds of the sale of said $200,000 of 6% Collateral Trust Sinking Fund Gold Notes will provide the undersigned with funds which it requires to effect the purchase of 19,250 of the 29,100 shares of capital stock of Checker Taxi Company referred to in paragraph (a) above.

The undersigned agrees to pay all expenses in connection with the issuance of said notes, including stamp taxes, cost of printing notes, cost of printing documents, Trustee's fees and expenses, and the fees of your counsel.

Your acceptance of this offer in the space therefor provided below, constitutes this offer an agreement by the undersigned to sell to you, and by you to purchase, said $200,000 principal amount of 6% Collateral Trust Sinking Fund Gold Notes of the Company on the above and foregoing terms and conditions, subject to the approval by such counsel as you may designate of the validity of the creation, issuance and sale of said notes, and of the form and validity of all documents and proceedings in connection therewith

Gov. Ex. 102. (October 20, 1932. Minutes of Stockholders Meeting of Cab Sales—)

2025 WAIVER OF NOTICE

The undersigned, constituting all of the Stockholders of CAB SALES AND PARTS CORPORATION, a Delaware corporation, hereby waive all notice required by law or the By-Laws of the corporation, for the calling and holding of a special meeting of the Stockholders, . . .

• • •

DATED: October 20, 1932.

s/PAUL L'AMOREAUX

The Chairman stated that the meeting had been called for the purposes set forth in said Waiver, and the Secretary read to the meeting the minutes of a special meeting of the Board of Directors held on this day at the office of the corporation at the hour of ten o'clock A. M.

Thereupon, on motion duly made and seconded, and unanimously carried by the affirmative vote of all the Stockholders of the corporation, the following resolution was adopted:

RESOLVED: That the Stockholders of this corporation hereby consent to, ratify and approve of the execution and delivery by this corporation of a contract between this corporation and Checker Taxi Company, and known as the "Chicago Cab Contract", authorized by the Board of Directors of this corporation at a meeting held July 19, 1932,

Thereupon, on motion duly made and seconded, and unanimously carried, the following resolution was adopted:

RESOLVED: That all the stockholders of this corporation consent to, ratify and approve of the sale by this corporation to Waverly Corporation of an issue of $200,000 principal amount of 6% Collateral Trust Sinking Fund Gold Notes, and the execution and delivery of a Collateral Trust Agreement, . . .

* * *

Thereupon, on motion duly made and seconded and unanimously carried by the affirmative vote of all the Stockholders of the corporation, the following resolution was adopted:

RESOLVED: That all of the stockholders of this corporation consent to, ratify and approve of the execution and delivery of an amendment to the Collateral Trust Agreement, dated as of May 1, 1931, between this corporation and Foreman-State Trust and Savings Bank, as Trustee (under which Collateral Trust Agreement the First Union Trust and Savings Bank is now acting as Trustee), and the pledging as additional security therefor, 29,100 shares of the capital stock of the Checker Taxi Company and all of the right, title and interest of this corporation in a certain agreement called the "Chicago Cab Contract", made July 19, 1932, between this corporation and the Checker Taxi Company, subject however, to the lien of a certain Collateral Trust
2026 Agreement dated as of October 1, 1932, between this corporation and First Union Trust and Savings

Bank, securing an aggregate in the principal amount of $200,000; all in accordance with resolutions adopted by the Board of Directors of this corporation at a special meeting held October 20, 1932.

Gov. Ex. 103. (October 21, 1932. Minutes of Directors Meeting of Waverly—)

There were present: Ernest H. Miller
Joseph J. White
Benjamin Samuels

constituting the entire Board of Directors of the corporation.

Mr. Thomas B. Hogan, President of Yellow Cab Company, Mr. Sol Kesner, President of Benzoline Motor Fuel Co. and Mr. R. H. Bieze, Treasurer of Yellow Cab Company, were present by invitation of the Chairman.

Mr. Ernest H. Miller, the President of the corporation, acted as Chairman of the meeting, and Mr. Joseph J. White, the Secretary of the corporation, acted as Secretary thereof.

The Chairman stated that this Corporation is the owner of upwards of 81,700 shares of the 400,000 issued and outstanding shares of stock of Chicago Yellow Cab Company, Inc., a New York corporation, which is the owner of all the issued and outstanding shares of stock (except directors' qualifying shares), of Benzoline Motor Fuel Co., an Illinois corporation, and that said Benzoline Motor Fuel Co. is the owner and holder of the entire issued and outstanding $500,000 principal amount of Ten-year 6% Collateral Trust Gold Notes of Cab Sales and Parts Corporation, dated as of May 1, 1931, issued under that certain collateral trust agreement dated as of May 1, 1931, between said Cab Sales and Parts Corporation, a Delaware corporation, and Foreman-State Trust and Savings Bank; that said Foreman-State Trust and Savings Bank has since resigned as such Trustee and First Union Trust and Savings Bank has been appointed successor-trustee under said Collateral Trust Agreement dated as of May 1, 1931, and is now acting as Trustee thereunder; that said notes are secured by the pledge with the Trustee under said Collateral Trust Agreement of—

(a) 30,525 shares of the capital stock without par value of Checker Taxi Company, a Delaware corporation, of an authorized issue of 75,000 shares, of which 61,000 shares are issued and outstanding;

(b) All the right, title and interest, but not the obligations, of Cab Sales and Parts Corporation, in, to, and under, and all the income, profits and benefits accruing to it under two gasoline, oil, etc. contracts, both dated as of May 1, 1931, one between Benzoline Motor Fuel Co. and Cab Sales and Parts Corporation, and the other between Cab Sales and Parts Corporation and Checker Taxi Company;

2027 that Cab Sales and Parts Corporation now owns 9,850 shares of stock of said Checker Taxi Company, in addition to the 30,525 shares pledged under said Collateral Trust Agreement, and is about to complete the purchase of 19,250 additional shares, and upon the completion of such purchase will own 29,100 shares of stock of said Checker Taxi Company in addition to the 30,525 shares heretofore pledged, making its total holdings 59,625 shares of said Checker Taxi Company, being 97.74% of the issued and outstanding shares of stock of said Checker Taxi Company; that Cab Sales and Parts Corporation has not sufficient funds to complete the purchase of said 19,250 additional shares, and in order to obtain funds with which to consummate such purchase, Cab Sales and Parts Corporation desires to issue and sell, at par and accrued interest, $200,000 principal amount of 6% Collateral Trust Sinking Fund Gold Notes, to be dated as of October 1, 1932, to become due October 1, 1942, and to be issued under and pursuant to the terms of a Collateral Trust Agreement to be dated as of October 1, 1932, between said Cab Sales and Parts Corporation and First Union Trust and Savings Bank, as Trustee, and to secure the payment of said notes Cab Sales and Parts Corporation proposes to pledge with said Trustee—

(a) said 29,100 additional shares of the capital stock without par value of Checker Taxi Company, a Delaware corporation;

(b) all the right, title and interest (but not the obligations) of Cab Sales and Parts Corporation, in, to, and under, and all the income, moneys, profits and benefits accruing or payable to it under a certain agreement dated July 19, 1932, between it and Checker Taxi Company, concerning certain cabs formerly belonging to and drivers formerly with Chicago Cab Company, pursuant to which agreement there is to be paid to Cab Sales and Parts Corporation by Checker Taxi Company, one-half of all moneys in excess of $25 per cab per month collected by it from each such ~~former~~ driver

of Chicago Cab Company whose cab was transferred to Checker Taxi Company (which agreement continues for a period of five (5) years from the date thereof, subject to the right and option on the part of Checker Taxi Company at any time after July 19, 1933, to pay to Cab Sales and Parts Corporation $100,000 in cash and be relieved and discharged from any continuing obligations under said agreement for the balance of the period thereof);

(c) all of the collateral and property pledged under said Collateral Trust Agreement dated as of May 1, 1931, subject to the pledge under said Collateral Trust Agreement dated as of May 1, 1931.

The Chairman further stated that Cab Sales and Parts Corporation, a Delaware corporation, had offered to sell to this corporation said issue of $200,000 principal amount of Cab Sales and Parts Corporation 6% Collateral Trust Sinking Fund Gold Notes, to be dated as of 2028 October 1, 1932, at the face amount thereof plus accrued interest thereon from October 1, 1932, and submitted to the meeting the offer of said Cab Sales and Parts Corporation, which offer so submitted was filed with the Secretary and ordered marked for identification a 1 filed as part of the minutes of this meeting.

The Chairman further stated that the acquisition by Cab Sales and Parts Corporation of said additional shares would give Cab Sales and Parts Corporation 97.74% of the issued and outstanding shares of stock of Checker Taxi Company, all of which stock will be pledged under said Collateral Trust Agreement dated as of May 1, 1931, and/or under said Collateral Trust Agreement to be dated as of October 1, 1932. Further, that the acquisition of said 19,250 additional shares of stock by Cab Sales and Parts Corporation would give it substantially complete ownership and control of Checker Taxi Company, and would be beneficial to Checker Taxi Company and would be beneficial to Checker Taxi Company and in that connection said shares are being acquired from persons who have been actively opposed to the present management and who constitute a source of serious dissension in its affairs, which opposition and source of dissension would be entirely eliminated by the acquisition of said shares by Cab Sales and Parts Corporation, and the elimination of such persons will almost certainly be reflected in better operations of Checker Taxi Company, which should be beneficial to Benzoline Motor Fuel Co. with

respect to the quantity of gasoline, oil, and other supplies furnished by it under the contract between Benzoline Motor Fuel Co. and Cab Sales and Parts Corporation and the contract between Cab Sales and Parts Corporation and Checker Taxi Company, which contracts constitute part of the pledged security for said $500,000 of notes held by Benzoline Motor Fuel Co.

The Chairman further stated that in his opinion the operation of the agreement made July 19, 1932, between Cab Sales and Parts Corporation and Checker Taxi Company (which contract and the revenue to be derived therefrom are to be pledged under the Collateral Trust Agreement to be dated as of October 1, 1932) should, with a slight improvement in the taxicab situation in Chicago, produce sufficient revenue to pay the interest and provide funds for the redemption of the $300,000 note issue, or, in the event Checker Taxi Company should exercise its option to terminate said agreement after July 19, 1933, would, at the time of such termination, provide funds in the sum of $100,000 which would be available for the redemption of notes issued under said Collateral Trust Agreement to be dated as of October 1, 1932.

The Chairman further stated that with the expected improvement in the taxicab situation, Checker Taxi Company (97.74% of the stock of which will be pledged under said two Collateral Trust Agreements), should have sufficient earnings to enable it to declare substantial dividends,
2029 which dividends will be payable into the sinking funds under two Collateral Trust Agreements, as in said respective Collateral Trust Agreements provided.

The Chairman further stated that provision is made in the Collateral Trust Agreement to be dated as of October 1, 1932, and in an amendment to the Collateral Trust Agreement dated as of May 1, 1931, to the effect that so long as any notes are issued and outstanding under either of said Collateral Trust Agreements, Cab Sales and Parts Corporation is not to pay any dividends on its capital stock nor make any distributions to its stockholders, and that all net profits or surplus available for dividends are to be paid to the Trustee under said respective Collateral Trust Agreements for the sinking funds created in and by said respective Collateral Trust Agreements, all subject to and in accordance with the terms and provisions of said Collateral Trust Agreement to be dated as of October 1, 1932 and of said Collateral Trust Agreement dated as of May 1,

1931, as amended, and that with the expected improvement in the taxicab situation, sales of taxicabs and parts by Cab Sales and Parts Corporation should increase and provide it with substantial earnings which will be payable into said respective sinking funds.

Mr. BENJAMIN SAMUELS, President of Chicago Yellow Cab Company, Inc., Mr. THOMAS B. HOGAN and Mr. R. H. BIEZE stated that they concurred in and approved the foregoing statements made by the Chairman.

The Chairman further stated that Cab Sales and Parts Corporation had requested Benzoline Motor Fuel Co. to consent to certain changes in the sinking fund provisions of the Collateral Trust Agreement dated as of May 1, 1931, which will extend the time for redeeming $60,000 principal amount of the notes held by Benzoline Motor Fuel Co. so that the time for redemption of $10,000 thereof will be extended for five months; $5,000 for one year, $40,000 for seventeen months, and $5,000 for two years; and, in connection with such extension, had offered to pledge with the Trustee under said Collateral Trust Agreement so dated as of May 1, 1931, said 29,100 shares of stock of Checker Taxi Company and the interest of Cab Sales and Parts Corporation in and to said agreement with Checker Taxi Company dated July 19, 1932, subject only to the pledge of said shares and of said agreement under said Collateral Trust Agreement to be dated as of October 1, 1932.

Mr. Sol Kesner stated that owing to the strike which occurred at the Checker Taxi Company last winter and the general falling off of taxicab business during the part year, the amount of gasoline, oil, and other supplies purchased by Checker Taxi Company under its gasoline and oil contract with Cab Sales and Parts Corporation was materially below its usual requirements, so that the profits to Cab Sales and Parts Corporation under said contract (which profits have been paid into the sinking fund) produced approximately $15,000 in excess of the interest requirements of the $500,000 of notes issued under said Collateral
2030 Trust Agreement dated as of May 1, 1931, but that with a slight improvement in the taxicab situation and with the improvement in the internal affairs of Checker Taxi Company which should result from the acquisition by Cab Sales and Parts Corporation of said 19,250 additional shares of stock of Checker Taxi Company, and the fact that the Century of Progress Exhibition will be held in Chicago next year, should increase the revenues of Cab

Sales and Parts Corporation under the gasoline and oil contracts sufficiently to permit the redemption through the sinking fund of the respective times provided in said Collateral Trust Agreement dates as of May 1, 1931, as the same is proposed to be amended.

The Chairman and Messrs. Samuels and Hogan stated that they concurred in the views expressed by Mr. Sol. Kesner.

The matter was thereupon considered, and on motion made by Mr. Samuels, seconded by Mr. White, the following preambles and resolutions were unanimously adopted by the affirmative votes of all the directors of the corporation:

* * *

NOW, THEREFORE, BE IT RESOLVED, that this corporation accept said offer of Cab Sales and Parts Corporation on the terms and conditions therein set forth, and purchase from said Cab Sales and Parts Corporation on the terms and conditions set forth, and purchase from said Cab Sales and Parts Corporation on the terms and conditions set forth in said offer, an issue of $200,000 principal amount of Cab Sales and Parts Corporation 6% Collateral Trust Sinking Fund Gold Notes to be dated as of October 1, 1932, in the event that concurrenly with the purchase of said note issue by this Corporation, said additional 29,100 shares of the capital stock of Checker Taxi Company and the contract between Cab Sales and Parts Corporation and Checker Taxi Company dated July 19, 1932 (subject to the pledge of said shares and said agreement under said Collateral Trust Agreement to be dated as of October 1, 1932), are pledged under said Collateral Trust Agreement dated as of May 1, 1931, securing said $500,000 in notes held by said Benzoline Motor Fuel Co., and said Collateral Trust Agreement dated as of May 1, 1931, is further amended so as to provide that no dividends will be paid by Cab Sales and Parts Corporation on its stock nor distributions made to its stockholders so long as any of the notes issued under said Collateral Trust Agreement are outstanding, and the form and legality of said Collateral Trust Agreement to be dated as of October 1, 1932, and of the notes to be issued under and secured thereby, and of the Amendment to the Collateral Trust Agreement dated as of May 1, 1931, and all procedure incidental thereto are satisfactory to and approved by counsel for this corporation; and

2031 FURTHER RESOLVED, that the proper officers of this corporation be and they hereby are authorized and empowered, for and on behalf and in the name of this corporation, to purchase said issue of notes and pay therefore the sum of $200,000 plus accrued interest on said notes from October 1, 1932, to the date of such purchase, all in accordance with and subject to the terms and conditions of said offer and of these resolutions.

The Chairman stated that this corporation did not have available cash in sufficient amount to consummate the purchase of said issue of $200,000 principal amount of Cab Sales and Parts Corporation 6% collateral Trust Sinking Fund Gold Notes.

The Chairman further stated that Yellow Cab Company, a Maine corporation, was the owner and holder of all of the issued and outstanding shares of the common stock of this corporation, and suggested borrowing the sum of $180,000 from said Yellow Cab Company with which to consummate the purchase of said issue of notes.

The matter was fully considered, and on motion duly made and seconded and by the affirmative vote of all the directors of the corporation, the following resolution was unanimously adopted:

RESOLVED, that this corporation borrow from Yellow Cab Company, a Maine corporation, the sum of $180,000, to enable this corporation to purchase the issue of $200,000 principal amount of Cab Sales and Parts Corporation 6% Collateral Trust Sinking Fund Gold Notes to be dated as of October 1, 1932, and to evidence the amount so borrowed by the demand collateral note of this corporation, payable to the order of Yellow Cab Company, bearing interest at the rate of 6% per anum, payable semi-annually, said demand note to be secured by the pledge by this corporation of all of said 6% Collateral Trust Sinking Fund Gold Notes of Cab Sales and Parts Corporation purchased by this corporation and from time to time outstanding, and the President and Secretary of this corporation be and they hereby are authorized, empowered and directed, for and on behalf and in the name of this corporation, to execute and deliver to said Yellow Cab Company the demand collateral note of this corporation evidencing the amount so borrowed and to secure the same by the pledge with said Yellow Cab Company of the 6% Collateral Trust Sinking Fund

Gold Notes of Cab Sales and Parts Corporation purchased by this corporation and from time to time outstanding.

Gov. Ex. 104 (October 21, 1932. Minutes of Directors Meeting of Yellow Cab—)

There were present: Ernest H. Miller, Benjamin Samuels, Thomas B. Hogan, S. H. Kesner, Joseph J. White, Rudolph H. Bieze, Edward N. D'Ancona, constitut-
2032 ing a majority and quorum of the Directors of the corporation.

Mr. Ernest H. Miller acted as Chairman of the meeting, and Mr. Edward N. D'Ancona acted as Secretary thereof.

• • •

The Chairman stated that this corporation is the owner of 6,000 shares of common stock of the par value of $100 each of The Waverly Corporation, a Delaware corporation, being all the issued and outstanding shares of common stock of The Waverly Corporation; that The Waverly Corporation desired to borrow the sum of $180,000 and stated that this corporation had available funds in excess of that amount and recommended this corporation loaning the sum of $180,000 to The Waverly Corporation. Messrs. Hogan, Samuels and Bieze stated that they concurred in the recommendation of the Chairman.

The matter was fully considered, and on motion of Mr. Hogan, seconded by Mr. Bieze, the following resolution was unanimously adopted:

Resolved, that this corporation loan to The Waverly Corporation, a Delaware corporation, the sum of $180,000, such sum so loaned to be payable on demand of this corporation and to bear interest at the rate of 6% per annum, payable semi-annually, such loan to be evidenced and secured in such manner as shall be approved by the President of this corporation.

Gov. Ex. 105 (Plaintiff's Interrogatory No. 24—)

To Cab Sales. Did you expend any part of the $200,000 borrowed by you from The Waverly Corporation in 1932 to purchase, directly or indirectly, stock of Checker? If so, how much was so spent? If not, state generally for what the money was expended.

Gov. Ex. 106 (Cab Sales Answer to Plaintiff's Interrogatory No. 24—)

24. Yes. All.

2033 *Gov. Ex. 107 (Oct. 21, 1932, Minutes of Directors Meeting of Benzoline)*

There were present:

S. H. Kesner
Benjamin Samuels,
Rudolph H. Bieze,

constituting the entire Board of Directors of the corporation.

Mr. S. H. Kesner, the President of the corporation, acted as Chairman of the meeting, and Mr. Benjamin Samuels, the Secretary of the corporation, acted as Secretary of the meeting.

• • •

The Chairman stated that the Cab Sales and Parts Corporation had requested this corporation to consent to an amendment to the Collateral Trust Agreement dated as of May 1, 1931, between Cab Sales and Parts Corporation and Foreman-State Trust and Savings Bank, as Trustee (under which collateral trust agreement First Union Trust and Savings Bank is now Trustee), securing an issue of $500,000 principal amount of Cab Sales and Parts Corporation Ten-Year 6% Collateral Trust Gold Notes, dated as of May 1, 1931, all of which notes are held by this corporation, and submitted to the meeting said request of Cab Sales and Parts Corporation, which request was then considered by the meeting, and a copy thereof ordered inserted in the minutes of said meeting which copy is as follows:

CAB SALES AND PARTS CORPORATION
1401 West Jackson Boulevard
Phone Haymarket 1300
Chicago, Ill.

October 20, 1932

Benzoline Motor Fuel Co.
Chicago, Illinois

Gentlemen:

In connection with the ten year 6% collateral gold notes in the aggregate principal amount of $500,000, executed by us and held by you, we desire to advise you:

1. That due to the general business depression existing for the period since May 1, 1931, the income from our gas sales has fallen off to the extent that we have been unable to deposit in the sinking fund created by Article V of the Collateral Trust Agreement, sufficient funds to redeem the $40,000 principal amount of notes therein provided to be redeemed on or before May 12th, 1932.

2034 We, therefore, request you to consent to an amendment to said Collateral Trust Agreement extending the time within which to redeem said $40,000 principal amount of notes, and also extending the time within which to redeem the $45,000 principal amount of notes required to be redeemed on or before May 1, 1933, so that said $85,000 principal amount of notes will be redeemed as follows:

$25,000 thereof on or before May 1, 1933,
$50,000 thereof on or before October 1, 1933,
$5,000 thereof on or before May 1, 1934,
$5,000 thereof on or before May 1, 1935

Should you see fit to grant our request and consent to such amendment, we offer to pledge additional security with the Trustee and to amend and change said Collateral Trust Agreement as follows:

(a) By depositing 29,100 additional shares of the capital stock of the Checker Taxi Company, subject only to the lien of a collateral trust agreement, to be dated as of October 1, 1932, between the undersigned and the First Union Trust and Savings Bank, Trustee, securing $200,000 aggregate principal amount of 6% collateral trust sinking fund gold notes;

(b) By conveying all the right, title and interest of the company in the income and benefits accruing to the undersigned under a certain agreement made July 19, 1932, between the undersigned and Checker Taxi Company, concerning the acquisition of cab equipment by the Checker Taxi Company from former drivers of the Chicago Cab Company, subject only to the lien of said collateral trust agreement dated as of October 1, 1932, hereinabove referred to;

(c) By amending said collateral trust indenture so that said indenture will provide that so long as any of the notes held by you are outstanding and unpaid, the undersigned will pay no dividend or dividends on its capital stock, and further the undersigned agrees to cause all dividends payable on the 30,525 shares of stock of Checker

Taxi Company held by the Trustee under the Collateral Trust Agreement dated as of May 1, 1931 to be paid into the sinking fund created in and by said collateral trust agreement.

Awaiting your consideration of the matter, we are

Very respectfully yours,

CAB SALES AND PARTS CORPORATION
By s/ PAUL L'AMOREAUX
President

• • •

The matter was then fully considered, and on motion duly made and seconded and by the affirmative vote of all the directors of the corporation, the following resolution was unanimously adopted:

RESOLVED, that the form of indenture submitted to this meeting, amending that certain Collateral Trust
2035 Agreement dated as of May 1, 1931, between Cab Sales and Parts Corporation and Foreman-State Trust and Savings Bank, as Trustee, securing an issue of $500,000 principal amount of Ten-Year 6% Collateral Trust Gold Notes of Cab Sales and Parts Corporation, all of which notes are owned by this Corporation . . . be and the same hereby is authorized, approved and consented to, . . .

• • •

The question of declaring a dividend on the capital stock of this corporation then came up for consideration, and on motion duly made and seconded and by the affirmative vote of all the directors of the corporation present at this meeting, the following resolution was unanimously adopted:

RESOLVED, that a dividend of thirty per cent (30%) on the capital stock of this corporation be and the same hereby is declared, payable November 28, 1932, to stockholders of record at the close of business November 18, 1932.

Gov. Ex. 108 (September 41, 1933, Memorandum from Oakland to McMath)

It is my understanding that on trust #17221 the Benzoline pay Cab Sales a commission on all gas sold to Checker Taxi Co. and they deposit this commission in a sinking fund for the retirement of these bonds.

Kindly confirm this and also advise me the rate of commission.

Gov. Ex. 109 (September 13, 1933, Letter from McMath, Treasurer of Checker, to Oakland of CCM)

I am in receipt of your letter under date of September 14th regarding Trust #17221 and beg to advise you as follows:

Cab Sales and Parts Corporation is billed indirectly for gasoline and oil, and Checker Taxi Company is also billed at a certain rate, the difference between the two billings being commission due Cab Sales and Parts Corporation, which is deposited in the Sinking Fund for the retirement of these bonds. Cab Sales is charged the purchase price of benzoline plus seven-eighths of a cent per gallon for handling. Checker Taxi Company is charged on the basis of the average daily quotation over a period of fifteen days, based on the Platt's Oil Gram, plus one and three-fourths cents per gallon for handling. Therefore, you will readily see that the commission or rebate to Cab Sales and Parts Corporation fluctuates on every fifteen day period, but, for your information, may add that the average commission per month for 1933 was approximately $2,300.00 to
2036 $2,400.00 per month. The commission for August, 1933 is $2,385.80.

Referring to the oil, we purchase and sell three grades of oil, upon which Cab Sales receives a rebate of six cents, ten cents, and fourteen cents per gallon respectively.

Gov. Ex. 110 (November 16, 1933, Minutes of Directors Meeting of Benzoline.)

Present: Benjamin Samuels
Thomas B. Hogan
Rudolph Bieze
constituting the entire Board of Directors.

Mr. Samuels acted as chairman of the meeting and Mr. Bieze acted as secretary.

• • •

The chairman thereupon stated that Cab Sales and Parts Corporation is in default in the payment of its Ten Year 6% Collateral Gold Notes, dated as of May 1, 1931, $490,000.00 (the entire amount outstanding) of which are owned by this corporation; that $15,000.00 of Notes due May 1, 1933 remain unpaid and $50,000.00 due October 1, 1933, remain unpaid; that The First National Bank of Chicago, as Trustee under the Collateral Trust Agreement, dated as of May 1, 1931, securing said Notes, has on

hand sufficient moneys to pay the semi-annual interest due November 1st and the amount of $5,000.00 to apply on the principal; that said Bank requests a letter from this corporation, advising them in reference to the desire of this corporation to take action under said Collateral Trust Agreement in reference to foreclosing on the securities deposited under said Agreement. The President thereupon presented the letter which he proposed to sign in reference to accepting the sum of $5,000.00 in payment of Note No. 3 and advising the Bank to take no steps to foreclose on the collateral deposited under said Agreement.

Upon motion duly made, seconded and carried it was

RESOLVED, that the President of this corporation be and he is hereby authorized to sign a letter, dated as of November 16, 1933, to The First National Bank of Chicago, as Trustee under Trust Number 17221, advising said Bank to refrain from taking any action at this time in reference to foreclosing on the collateral deposited under the Cab Sales and Parts Corporation's Collateral Trust Agreement, dated as of May 1, 1931.

2036A—*Gov. Ex. 111 (April 19, 1934, Minutes of Directors Meeting of Benzoline.)*

Present: Benjamin Samuels
Thomas B. Hogan
R. H. Bieze

constituting the entire Board of Directors.

Mr. Samuels acted as chairman of the meeting and Mr. Bieze acted as secretary.

• • •

The chairman thereupon stated that Cab Sales and Parts Corporation is in default in payment of its Ten Year 6% Collateral Gold Notes dated as of May 1, 1931, the entire amount outstanding of which are owned by this corporation; that $5,000.00 on notes due May 1, 1933, remain unpaid and $50,000.00 due on October 1, 1933, remain unpaid; that there will become due on May 1, 1934, an additional $55,000.00; that The First National Bank of Chicago as Trustee under the Collateral Trust Agreement dated as of May 1, 1931, securing said notes, has on hand sufficient money to pay the semi-annual interest due May 1st and the amount of $10,000.00 to apply on the principal; that said Bank requests a letter from this corporation advising it as to the desire of this corporation that said Trustee take action under said Collateral Trust

Agreement in reference to foreclosing on the securities deposited under said Agreement.

The President thereupon presented the letter which he proposed to sign in reference to accepting the interest and the sum of $10,000.00 on account of principal, and advising the Bank to take no steps to foreclose on the collateral deposited under said Agreement.

Upon motion duly made, seconded and carried, it was

RESOLVED that the President of this corporation be and he is hereby authorized to sign a letter dated as of April 11, 1934, to The First National Bank of Chicago as Trustee under Trust No. 17221, advising said Bank to refrain from taking any action at this time in reference to foreclosing on the collateral deposited under the Cab Sales and Parts Corporation's Collateral Trust Agreement dated as of May 1, 1931.

Gov. Ex. 112.—August 1, 1934, Agreement between Cab Sales, Benzoline and Waverly.)

THIS AGREEMENT, entered into as of the 1st day
2637 of August, 1934, between Cab Sales and Parts Corporation, a corporation organized and existing under and by virtue of the laws of the State of Delaware (hereinafter called the "Company"), party of the first part; Benzoline Motor Fuel Co., a corporation organized and existing under and by virtue of the laws of the State of Illinois (hereinafter called "Benzoline"), party of the second part; and The Waverly Corporation, a corporation organized and existing under the laws of the State of Delaware (hereinafter called "Waverly"), party of the third part;

WITNESSETH:

WHEREAS, concurrently herewith the Company is entering into an Indenture with The First National Bank of Chicago, as Trustee, wherein the obligations of the Company under its Collateral Trust Agreement of May 1, 1931 and the supplement thereto of October 21, 1932, securing the Company's Ten-Year 6% Collateral Gold Notes of May 1, 1931 (hereinafter referred to as the Notes of May 1, 1931), are modified in certain substantial respects as therein set forth, to which Indenture of even date herewith, Benzoline, as the owner and holder of all of said Notes of May 1, 1931 now outstanding, has consented and agreed by joining therein.

WHEREAS, also concurrently herewith, the Company is entering into an Indenture with The First National Bank of Chicago, as Trustee, wherein the obligations of the Company under its Collateral Trust Agreement of October 1, 1932, securing the Company's 6% Collateral Trust Sinking Fund Gold Notes of October 1, 1932 (hereinafter referred to as the Notes of October 1, 1932) are modified in certain substantial respects as therein set forth, to which Indenture of even date herewith, Waverly, as the owner and holder of all of said Notes of October 1, 1932, now outstanding, has consented and agreed by joining therein.

WHEREAS, the said Notes of May 1, 1931 are in part secured by a pledge by the Company of 30,525 shares of the capital stock of Checker Taxi Company, a Delaware corporation, and said Notes of October 1, 1932, are in part secured by a pledge by the Company of 29,100 shares of the capital stock of said Checker Taxi Company, all of which pledged stock is owned by the Company.

NOW THEREFORE, in consideration of the premises, the sum of One Dollar to each in hand paid by the other, and in consideration of Benzoline and Waverly respectively consenting and agreeing to said Indentures of even date herewith between the Company and said The First National Bank of Chicago, as Trustee, and other good and valuable considerations, receipt thereof is hereby acknowledged, IT IS MUTUALLY AGREED as follows:

First: The Company agrees that so long as any of said Notes of May 1, 1931 and said Notes of October 1,
2039 1932 remain unpaid, it will not sell any of said pledged shares of Checker Taxi Company without first offering to Benzoline the right and opportunity to purchase such of said shares as are pledged to secure said Notes of May 1, 1931, or without offering to Waverly the right and opportunity to purchase such of said shares of Checker Taxi Company as are pledged to secure said Notes of October 1, 1932, at the same price and upon the same terms and conditions as the Company is willing to sell such shares to any other person, firm or corporation, and further agrees that it will not sell any of said pledged shares without giving notice in writing to Waverly and to Benzoline of the Company's desire to sell such shares and the price, terms and conditions of any such proposed sale, following which notice it is agreed that Benzoline and Waverly shall each have a period of thirty days within which each of

them may exercise their respective rights to purchase said shares as hereinabove provided, at the same price and upon the same terms and conditions as are set forth in said Notice. It is further agreed that if either Benzoline or Waverly does not desire to exercise in full its rights to do purchase said shares according to this paragraph following any such notice, the party not desiring so to do may assign to the other party such of its said purchase rights as such party does not exercise.

Gov. Ex. 113. (August 3, 1934, Minutes of Directors Meeting of Chicago Yellow.)

Present: Thomas B. Hogan — Paul E. Keller
R. H. Bieze — Ralph E. Stouffer
Joseph J. White — I. N. Nelson
Frank D. Fulton

constituting a majority of the Board of Directors.

Mr. Thomas B. Horn, Vice President of the corporation, acted as chairman of the meeting, and Mr. R. H. Bieze, Secretary of the corporation, acted as secretary of the meeting.

* * *

A request was presented on behalf of Cab Sales and Parts Corporation for an extension of time on all principal payments now due and to become due, until September 1, 1935, upon the 6% Collateral Trust Sinking Fund Gold Notes of Cab Sales and Parts Corporation now held by The Waverly Corporation, a reduction of the interest rate on such Notes until September 1, 1935, to 4%, and a release until September 1, 1935, of all profits resulting to Cab Sales and Parts Corporation from sales made pursuant to the contracts pledged to secure such Notes. A request was also
2040 made for similar extension and modifications of the Tax Year 6% Collateral Trust Gold Notes of the Cab Sales and Parts Corporation held by Benzoline Motor Fuel Co.

A discussion followed. Upon motion duly made, seconded and carried, it was

RESOLVED that counsel for the corporation present supplemental indentures, resolutions, and other documents to an adjourned meeting of this Board of Directors to be held on Monday, August 13, 1934, at eleven o'clock A. M., to comply with the request of Cab Sales and Parts Corporation to such extent as this Board may approve.

Gov. Ex. 114. (August 14, 1934, Letter McMath, Vice President of Cab Sales, to Waverly.)

You are the owner and holder of $185,000.00 in principal amount of 6% Collateral Trust Sinking Fund Gold Notes of this Company, secured by a Collateral Trust Agreement dated as of October 1, 1932, between this Company and First Union Trust and Savings Bank, as Trustee, being all of such Notes now outstanding. By virtue of the consolidation of the First Union Trust and Savings Bank and The First National Bank of Chicago, the latter is now the Trustee under such Indenture.

This corporation is in default under said Indenture in that it redeemed only $10,000.00 in principal amount of said Notes instead of $30,000.00 thereof on or before October 1, 1933, and has since such date redeemed only an additional $5,000.00 in principal amount of such Notes. According to such Indenture this Company is also required to redeem or cause to be redeemed an additional $35,000.00 in principal amount of said Notes in the year ending October 1, 1934.

Submitted herewith is an audit report by Arthur Young & Co., Certified Public Accountants, of this Company and its subsidiary, Checker Taxi Company, for the year 1933, and also the most recently available balance sheet and profit and loss statement for the year 1934, as prepared by the Auditing Department of this Company.

From the foregoing statement it is apparent that this corporation cannot correct its defaults or meet the next maturing redemption requirements without serious embarrassment to its credit and impairment of its working capital.

In view of these things, an extension of time to September 1, 1935 is respectfully requested within which to make the principal payments now in default and falling due prior to said date. A reduction in interest is also requested to 4% per annum during said period. To effect these
2041 modifications there is submitted herewith a form of Supplemental Indenture in which you are respectfully requested to join this Company and the Trustees pursuant to authority to be given by your Board of Directors. In further consideration of your agreeing to such extension and other proposed modifications of the Notes and Indenture, this Company agrees to enter into an agreement with your company and Benzoline Motor Fuel Co. in

the form submitted herewith, wherein this Company will agree not to sell any of the shares of Checker Taxi Company pledged under the above mentioned Indenture without giving to your company the right and opportunity to purchase such shares at the same price and upon the same terms and conditions as this Company is willing to sell such shares to any other person, firm or corporation.

Gov. Ex. 115 (August 14, 1934, Minutes of Directors Meeting of Benzoline)

The following directors were present:

Thomas B. Hogan
R. H. Bieze

constituting a majority of the Board of Directors.

Mr. Thomas B. Hogan acted as chairman of the meeting and Mr. R. H. Bieze acted as secretary.

• • •

Upon motion duly made, seconded and carried, the following preambles and resolutions were adopted:

WHEREAS, this corporation is the owner and holder of $470,000.00 in principal amount of Ten Year 6% Collateral Trust Gold Notes of Cab Sales and Parts Corporation, . . .

WHEREAS, said Cab Sales and Parts Corporation redeemed only $10,000.00 of the principal amount of said Notes instead of $25,000.00 thereof as required by said Indentures during the period commencing May 1, 1931 and ending May 1, 1933, and redeemed none of said Notes instead of $50,000.00 in principal amount thereof during the period commencing May 1, 1933 and ending October 1, 1933 and redeemed only $20,000.00 in principal amount of said Notes instead of $55,000.00 thereof during the period commencing October 1, 1933 and ending May 1, 1934, and therefore is in default by virtue of such failures in amount of $100,000.00 in the redemption of said Notes as required under said Original and Supplemental Indentures; and

WHEREAS, said Cab Sales and Parts Corporation has agreed in such Indentures to redeem or cause to be redeemed $60,000.00 in principal amount of said Notes during the twelve months period ending May 1, 1935; and

2042 WHEREAS, said Cab Sales and Parts Corporation has applied to this corporation for an extension of time to September 1, 1935 within which to redeem or cause to be redeemed said $160,000.00 in principal amount

of said Notes and for a reduction of the interest to accrue from August 1, 1934 to September 1, 1935 to 4% per annum instead of 6% per annum. . . .

• • •

NOW, THEREFORE BE IT RESOLVED that the President or Vice President and Secretary of this corporation be and they are hereby authorized to execute, acknowledge and deliver in the name of this corporation and under its corporate seal the Supplemental Indenture presented to this meeting, dated as of August 1, 1934 and providing for the extensions of time and reduction in interest and other modifications hereinabove referred to.

Gov. Ex. 116 (August 14, 1934, Minutes of Directors Meeting of Yellow)

The following directors were present:

Thomas B. Hogan	Joseph J. White
R. H. Bieze	Ralph E. Stouffer
Paul E. Keller	

constituting a majority of the Board of Directors.

Mr. Thomas B. Hogan, President of the corporation, acted as chairman of the meeting, and Mr. R. H. Bieze, Secretary of the corporation, acted as secretary of the meeting.

• • •

Upon motion duly made, seconded and carried, the following preambles and resolutions were adopted:

WHEREAS, The Waverly Corporation, of whose stock this Corporation owns a substantial amount, is the owner and holder of $185,000.00 in principal amount of 6% Collateral Trust Sinking Fund Gold Notes of Cab Sales and Parts Corporation, . . .

WHEREAS, said Cab Sales and Parts Corporation redeemed only $10,000.00 of the principal amount of said Notes instead of $30,000.00 thereof before October 1, 1933 as required by said Indenture, and has redeemed only $5,000.00 of the principal amount of said Notes since October 1, 1933, and therefore is in default in the principal amount of $15,000.00 in the redemption of said Notes as required under said Original Indenture; and

WHEREAS, said Cab Sales and Parts Corporation has agreed in such Indenture to redeem or cause to be redeemed $35,000.00 in principal amount of said Notes during the year ending October 1, 1934; and

WHEREAS, said Cab Sales and Parts Corporation has applied to said The Waverly Corporation for an extension of time to September 1, 1935, within which to redeem or cause to be redeemed said $50,000.00 in principal amount of said Notes and for a reduction of the interest to accrue from August 1, 1934 to September 1, 1935, to 4% per annum instead of 6% per annum as provided in said Notes and Indentures, . . .

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• • •

NOW THEREFORE, BE IT RESOLVED that the Board of Directors of The Waverly Corporation be and it is hereby authorized to adopt such resolutions as in its judgment may be necessary or advisable in allowing the Cab Sales and Parts Corporation an extension of time to September 1, 1935, to redeem said $15,000.00 in principal amount of said Notes now in default under said Indenture and $35,000.00 in principal amount of said Notes required by said Indenture to be redeemed in the year ending October 1, 1934.

FURTHER RESOLVED, that such Board of Directors be and it is hereby authorized to adopt such resolutions as in its judgment may seem necessary or advisable to reduce the rate of interest on said Notes to 4% per annum from August 1, 1934 to September 1, 1935, and to excuse payment to the Sinking Fund provided in such Indenture of all profits realized by said Cab Sales and Parts Corporation as a result of sales made in the period from August 1, 1934 to September 1, 1935 under the various contracts and contract rights pledged to secure said Notes under the terms of and more particularly described in said Indenture.

• • •

FURTHER RESOLVED, that said Board of Directors be and it is hereby authorized to adopt such resolutions as in its judgment may be necessary or advisable in authorizing the officers of The Waverly Corporation to enter into an agreement with said Cab Sales and Parts Corporation, in such form as to said officers may seem proper, wherein said Cab Sales and Parts Corporation agrees that it will not sell any of the collaterals pledged under said Indenture without first offering to The Waverly Corporation the right and opportunity to purchase such collaterals at the same price and upon the same terms

and conditions as Cab Sales and Parts Corporation may be willing to sell such collaterals to any other person, firm or corporation.

Gov. Ex. 117 (August 15, 1934, Minutes of Directors Meeting of Waverly)

The undersigned, R. H. Bieze, hereby certifies that he is the duly elected and acting Secretary of The Waverly Corporation, a Delaware corporation, and as such
2044 Secretary has custody of the minute books wherein are recorded the minutes of the meetings of the Board of Directors of said corporation, and that at a meeting of said Board of Directors duly convened and held on August 14, 1934, at the office of the company, at Chicago, Illinois, at which a quorum of the directors of said corporation was present and voting, the attached preambles and resolutions were duly adopted.

• • •

WHEREAS, this corporation is the owner and holder of $185,000.00 in principal amount of 6% Collateral Trust Sinking Fund Gold Notes of Cab Sales and Parts Corporation, . . .

• • •

NOW THEREFORE, BE IT RESOLVED that the President or Vice President and Secretary of this corporation be and they are hereby authorized to execute, acknowledge and deliver in the name of this corporation and under its corporate seal the Supplemental Indenture presented to this meeting, dated as of August 1, 1934 and providing for the extensions of time and reduction in interest and other modifications hereinabove referred to.

Gov. Ex. 118 (March 28, 1935, Minutes of Directors Meeting of Benzoline)

The following directors were present:

Benjamin Samuels
Thomas B. Hogan
R. H. Bieze

constituting the entire Board of Directors.

Mr. Samuels acted as chairman of the meeting and Mr. Bieze acted as secretary of the meeting.

• • •

The chairman thereupon presented a letter dated March 7, 1935, from M. H. Freimark, President of Cab Sales and Parts Corporation, which requests this corporation to con-

sent to an amendment to the Collateral Trust Agreement dated as of May 1, 1931, between Cab Sales and Parts Corporation and Foreman-State Trust and Savings Bank, as Trustee (which Agreement has been heretofore amended), securing an issue of $500,000.00 principal amount of Cab Sales and Parts Corporation Ten-Year 6% Collateral Trust Gold Notes dated as of May 1, 1931, all of which outstanding Notes, amounting to $470,000.00, are held by this corporation. The request was then considered by the Board, . . .

2045 Upon motion duly made, seconded and carried, the following preambles and resolutions were adopted:

WHEREAS this corporation is the owner and holder of $470,000.00 in principal amount of Ten-Year 6% Collateral Trust Gold Notes of Cab Sales and Parts Corporation, a Delaware Corporation, . . .

WHEREAS said Cab Sales and Parts Corporation under said Supplemental Indenture dated August 1, 1934, obtained an extension of time to September 1, 1935, within which to redeem or cause to be redeemed $160,000.00 in principal amount of said Notes, which, under said Original Indenture and Supplemental Indenture dated October 21, 1932, would have become due on or before May 1, 1935, and also obtained reduction of the rate of interest accruing from August 1, 1934, to September 1, 1935, to 4% per annum instead of 6% per annum, as provided in said Notes and Indentures; and

WHEREAS said Cab Sales and Parts Corporation has applied to this corporation for an extension of time to May 1, 1941, the date of the final maturity of said Notes, within which to redeem or cause to be redeemed said $160,000.00 in principal amount of said Notes and for a reduction in the rate of interest to accrue from September 1, 1935, to September 30, 1936, to 4% per annum instead of 6% per annum as provided in said Notes and Indentures, . . .

• • •

NOW THEREFORE, BE IT RESOLVED that the President or Vice President and Secretary of this corporation be and they are hereby authorized to execute, acknowledge and deliver in the name and on behalf of this corporation and under its corporate seal a Supplemental Indenture dated as of March 1, 1935, presented at this meeting, providing for the extensions of time and reduction in interest and other modifications hereinabove referred to.

Gov. Ex. 119 (March 28, 1935, Minutes of Directors Meeting of Chicago Yellow)

Present: Benjamin Samuels, Joseph J. White, Thomas B. Hogan, Ralph E. Stouffer, R. H. Bieze, I. N. Nelson, Frank D. Fulton, Levin Rank, Paul E. Keller

constituting the entire Board of Directors.

Mr. Benjamin Samuels, President of the corporation, acted as chairman of the meeting, and Mr. R. H. Bieze, Secretary of the corporation, acted as secretary.

• • •

2046 Upon motion duly made, seconded and carried, it was

RESOLVED that the action of the Board of Directors of Yellow Cab Company in authorizing its officers to execute a contract with Checker Cab Manufacturing Company, a New Jersey corporation, for the purchase of one thousand (1000) new taxicabs, without tires, to be built by Checker at the price of $1350. each plus any state and federal excise and or sales taxes, and which contract provides for an advance payment to Checker within five days after the signing of said agreement, in the amount of $135,000., be and the same is hereby ratified, confirmed and approved.

• • •

Upon motion duly made, seconded and carried, the following preambles and resolutions were adopted:

WHEREAS, Benzoline Motor Fuel Co., a subsidiary of this corporation, is the owner and holder of $470,000. in principal amount of Ten-Year 6% Collateral Trust Notes of Cab Sales & Parts Corporation, . . .

• • •

RESOLVED that the Board of Directors of Benzoline Motor Fuel Co. be and it is hereby authorized to adopt such resolutions as in its judgment may be necessary or advisable in allowing to Cab Sales & Parts Corporation an extension of time to May 1, 1941, to redeem said $160,000 in principal amount of said Notes required by said indentures to be redeemed September 1, 1935.

FURTHER RESOLVED that said Board be and it is hereby authorized to adopt such resolutions as in its judgment may be necessary or advisable to reduce the rate of interest on said Notes, to 4% per annum from September

1, 1935 to September 30, 1936, and to excuse payment to the Sinking Fund provided in said indentures, of all profits realized by said Cab Sales & Parts Corporation, as a result of sales made in the period from September 1, 1935 to September 30, 1936, under the various contracts and contract rights pledged to secure said Notes, under the terms of, and more particularly described in, said indentures.

• • •

FURTHER RESOLVED, that said Board of Directors be and it is hereby authorized to adopt such resolutions as in its judgment may be necessary or advisable, in authorizing the officers of Benzoline Motor Fuel Co. to enter into an agreement with said Cab Sales & Parts Corporation, in such form as to the said officers may seem proper, wherein said Cab Sales & Parts Corporation agrees that it will pay the interest on its indebtedness becoming due May 1, 1935, amounting to $9400., in full, and also agrees to
2047 pay on the first day of each and every month beginning as of March 1, 1935, the sum of $2500. which shall be applied to the payment of interest on the unpaid balance of said loan, the overplus, if any, to be applied to the liquidation of the principal.

Gov. Ex. 120 (October 24, 1935, Minutes of Directors Meeting of Benzoline)

The following directors were present:

Benjamin Samuels
Thomas B. Hogan
R. H. Bieze

constituting the entire Board of Directors. Messrs. Joseph J. White, Ralph E. Stouffer, Levin Rank, Paul L. Houston, J. L. Kesner and Paul E. Keller were also present.

• • •

Upon motion duly made, seconded and carried, the following preambles and resolutions were unanimously adopted:

WHEREAS this corporation is the owner and holder of $465,000.00 in principal amount of Ten Year 6% Collateral Trust Gold Notes of Cab Sales and Parts Corporation, a Delaware corporation, . . .

• • •

WHEREAS said Cab Sales and Parts Corporation under said Indenture, as amended, has agreed to redeem or

cause to be redeemed $60,000.00 in principal amount of said Notes during the twelve months' period ending May 1, 1936, and has redeemed $5,000.00 of said Notes for such period, a balance of $55,000.00 of such Notes reamining to be redeemed during the said period ending May 1, 1936, and $50,000.00 in principal amount of said Notes during the twelve months' period ending May 1, 1937 (totaling $105,000.00 in principal amount of said Notes); and

WHEREAS said Cab Sales and Parts Corporation has applied to this corporation for an extension of time to May 1, 1938, within which to redeem or cause to be redeemed the said $105,000.00 in principal amount of said Notes, and for a reduction in the rate of interest to accrue from October 1, 1936 to and including April 30, 1938, to 4% per annum instead of 6% per annum as provided in said Notes and Indenture, as amended, and has supported its said application by financial reports of said corporation and statements of its officers demonstrating that said corporation will be unable to meet its principal payments as provided in said Notes and Indentures, on May 1, 1936 and on May 1, 1937;

2048 WHEREAS written reports have been submitted to this meeting by Messrs. Benjamin Samuels, Levin Rank and R. H. Bieze stating that they have examined and analyzed such financial reports, and that in their opinion Cab Sales and Parts Corporation will be unable to pay more than the sum of $2,500.00 per month in payment of interest and in reduction of said loan until May 1, 1936, on account of the fact that said Cab Sales and Parts Corporation is paying approximately $3,500.00 per month to liquidate its average fifty-three day gasoline deliveries made by this corporation to said Cab Sales and Parts Corporation; that if Cab Sales and Parts Corporation continues to pay its $3,500.00 per month, said account will be brought to a fifteen day basis by May 1, 1936, and that thereafter, judging from said statements and balance sheets, said Cab Sales and Parts Corporation will be able to pay the sum of $5,000.00 per month on account of principal and interest on said Notes; and

WHEREAS said Cab Sales and Parts Corporation has agreed to enter into a contract dated October 1, 1935, to which The Waverly Corporation shall be a party, to liquidate its average fifty-three day gasoline account to a fifteen day basis by paying to this corporation 1¢ per gallon in addition to the price which said Cab Sales and

Parts Corporation is bound to pay under its contract with this corporation dated May 1, 1931;

* * *

NOW, THEREFORE, BE IT RESOLVED that the President or Vice President and Secretary of this corporation be and they are hereby authorized to execute, acknowledge and deliver in the name and on behalf of this corporation and under its corporate seal a Supplemental Indenture dated as of October 1, 1935, presented at this meeting providing for the extension of time and reduction in interest and other modifications hereinabove referred to.

FURTHER RESOLVED that such President or Vice President and Secretary of this Corporation be and they are hereby authorized to execute in the name and on behalf of this corporation and under its corporate seal or otherwise a contract between this corporation, The Waverly Corporation and Cab Sales and Parts Corporation to be dated as of October 1, 1935, wherein said Cab Sales and Parts Corporation agrees to liquidate its average fifty-three day gasoline account to a fifteen day basis by paying to this corporation 1¢ per gallon in addition to the price which Cab Sales and Parts Corporation is bound to pay under its contract dated May 1, 1931 with this
2049 corporation, and such other instruments in writing, and to do such other things as in their judgment may be necessary or advisable to carry into effect the foregoing resolutions.

Gov. Ex. 121 (October 26, 1935, Letter, President of Cab Sales to Benzoline)

In accordance with the various discussions had between ourselves and your company, in reference to extensions on note issue owned by your company, Cab Sales & Parts Corporation at present is indebted to your company in connection with that issue in the sum of $465,000.00, of which $55,000.00 will become due May 1, 1936, and $50,000.00 will become due May 1, 1937, and, of course, the semi-annual interest payments will also become due.

We find that since the last extension agreement was entered into, in view of present business conditions and after careful canvass of the future prospects, it will be impossible to meet, these prepayments and also keep up with the arrangement as to the payment of interest and principal amounting to $2500. per month, according to the arrangement now in force.

In view of the fact that we are at the same time paying $1000.00 on a similar loan due to the Waverly Corporation, and we and our subsidiaries have a past due indebtedness due to your company on the gasoline account and are willing to make certain definite arrangements to liquidate this indebtedness, together with arrangements to more rapidly liquidate not only the interest but also a portion of the principal on the note issue above mentioned, we, therefore, submit to your corporation for its consideration the following proposition:

1. We are ready and willing to pay a sufficient amount of money each month to liquidate the past due gasoline account on a basis of paying to your company one cent per gallon toward this liquidation, in addition to the regular purchase price on all gasoline delivered to our company from this date, until the said gasoline account has been liquidated down to a fifteen day basis, and which we believe will be liquidated down to that basis on or before April 30, 1936.

2. In addition thereto, we will pay on the first day of each and every month, beginning May 1, 1936, the sum of $5000.00 upon the above note issue to be applied first toward the liquidation of interest on the total outstanding balance due, at 4% per annum, balance of each of said payments to be applied against the principal due, and these payments shall continue on the first day of each and every month thereafter to and including the first day of April, 1938, the present monthly payments of $2500.00 on these notes to continue each month to and including April 1, 1936.

2050 In consideration of the liquidation of said gasoline account, as hereinabove provided for and the increased monthly payments beginning May 1, 1936, you are to agree to extend the prepayments of $55,000.00 due May 1, 1936, and the prepayment of $50,000.00 due May 1, 1937, to be extended to May 1, 1938, it being understood however that all moneys accumulating in the hands of the First National Bank of Chicago, as trustee, available for principal, shall be paid over to your company as rapidly as available.

In further consideration of these payments, as above set forth, the rate of interest on the loan above mentioned shall be continued at the rate of 4% per annum, up to and including the 30th day of April, 1938.

Will you be good enough to submit this proposition to your Board and if approved, arrange for definite contracts to be drawn embodying the terms of our agreement, and we shall have the same approved by our Board and executed by our respective officers.

Gov. Ex. 122. (December 19, 1935, Minutes of Directors Meeting of Benzoline)

Present: Benjamin Samuels
Thomas B. Hogan
R. H. Bieze

constituting the entire Board of Directors. Messrs. Joseph J. White, P. L. Houston, J. L. Kesner, Ralph E. Stouffer, Levin Rank and I. N. Nelson, members of the Board of Directors of Chicago Yellow Cab Company, Inc., Messrs. Frank D. Fulton and Paul E. Keller, members of the Board of Directors of Yellow Cab Company, Mr. Morris Markin, and Mr. Dwight P. Green and Miss M. L. Middlekauff of the firm of Kirkland, Fleming, Green & Martin were also present.

• • •

Upon motion duly made, seconded and carried, it was

RESOLVED that a dividend of $200,000 in principal amount of Ten-Year 6% Collateral Trust Gold Notes of Cab Sales and Parts Corporation, a Delaware corporation, together with accrued interest from November 15, 1935, to December 19, 1935, in the amount of $1,088.89, be and the same is hereby declared payable to the stockholder of record of this corporation on this date, being Chicago Yellow Cab Company, Inc.

2051 *Gov. Ex. 123. (January 24, 1938, Minutes of Directors Meeting of Chicago Yellow).*

The following directors were present:

Thomas B. Hogan	Paul L. Houston
R. H. Bieze	Walter S. Laird
Ralph E. Stouffer	Levin Rank

constituting a majority of the Board of Directors.

Mr. Thomas B. Hogan acted as chairman of the meeting and Mr. R. H. Bieze acted as secretary.

• • •

Upon motion duly made, seconded and carried, it was

RESOLVED that the action of the Board of Directors of Yellow Cab Company in approving the contract dated as of January 3, 1938, between Yellow Cab Company,

Cab Sales and Parts Corporation, and Checker Taxi Company, in reference to the reduction of the number of taxicabs to be operated in Chicago pursuant to the ordinance passed by the City Council of the City of Chicago December 22, 1937, be and the same is hereby ratified, confirmed and approved.

The chairman thereupon referred to the fact that this corporation owns certain Ten Year 6% Collateral Trust Gold Notes, and certain 6% Collateral Trust Sinking Fund Gold Notes of Cab Sales and Parts Corporation, and that certain modifications and extensions of the Collateral Trust Agreements securing such Notes between Cab Sales and Parts Corporation and The First National Bank of Chicago, as Trustee, had been made; he further stated that since the execution of such Agreements, certain contracts deposited as security thereon were not being carried out, because of the fact that it had been deemed advisable to organize Utilities Motor Fuel Co., Inc., under the laws of the State of Indiana for the purpose of selling gasoline to Yellow Cab Company, Cab Sales and Parts Corporation, Checker Taxi Company, and others, and that Benzolina Motor Fuel Co. is not furnishing Checker Taxi Company and Cab Sales and Parts Corporation their entire requirements of gasoline; he further stated that the contract known as the Chicago Cab Contract, dated July 19, 1932, between Cab Sales and Parts Corporation and Checker Taxi Company, no longer had any value.

He thereupon presented directions to The First National Bank of Chicago, Trustee under the Collateral Trust
2052 Agreement dated as of May 1, 1931, between Cab Sales and Parts Corporation and Foreman State Trust and Savings Bank as Trustee (under which The First National Bank of Chicago is acting as Successor Trustee), and under the Collateral Trust Agreement dated as of October 1, 1932, between Cab Sales and Parts Corporation and First Union Trust and Savings Bank as Trustee (under which The First National Bank of Chicago is acting as Successor Trustee), to release the Benzoline Contract, the Checker Contract, and the Chicago Cab Contract from the pledge contained in such Agreements.

Upon motion duly made, seconded and carried, it was

RESOLVED that the President or Vice President and Secretary of this corporation be and they are hereby authorized and directed to execute and deliver a direction to The First National Bank of Chicago, as Trus-

tee under Collateral Trust Agreement between Cab Sales and Parts Corporation and Foreman-State Trust and Savings Bank as Trustee, dated May 1, 1931 (under which The First National Bank of Chicago is acting as Successor Trustee) (known as Trust No. 17221), authorizing such Trustee to sign, execute and deliver a release, in the form presented to this meeting, of certain of the property pledged under said Collateral Trust Agreement dated May 1, 1931, and described therein as Parcels Two and Three, and in Indenture dated October 21, 1932, supplementing said Collateral Trust Agreement dated May 1, 1931, as Parcel B.

Upon motion duly made, seconded and carried, it was

RESOLVED that the President or Vice-President and Secretary of this corporation be and they are hereby authorized and directed to execute and deliver a direction to The First National Bank of Chicago, as Trustee under Collateral Trust Agreement between Cab Sales and Parts Corporation and First Union Trust and Savings Bank as Trustee, dated October 1, 1932 (under which The First National Bank of Chicago is acting as Successor Trustee), (known as Trust No. 17222), authorizing such Trustee to sign, execute and deliver a release; in the form presented to this meeting, of certain of the property pledged under said Collateral Trust Agreement dated October 1, 1932, and described therein as Parcels Two, Four and Five.

The chairman thereupon presented proposed Supplemental Indentures dated as of January 3, 1938, between Cab Sales and Parts Corporation and The First National Bank of Chicago as Trustee, wherein it is provided that the maturity date of said Notes of Cab Sales and Parts Corporation, secured by both of the above-mentioned Indentures, be extended to April 1, 1943, and the interest rate reduced to 3% per annum until maturity; and further providing that under the Indenture of May 1, 1931 (known as the Benzoline issue), Cab Sales and Parts Corporation deposit the
2053 sum of $10,000.00 quarter annually into the sinking fund provided for in such Indenture in addition to interest; and that under the Indenture of October 1, 1932 (known as the Waverly issue), Cab Sales and Parts Corporation deposit the sum of $3,750.00 quarter-annually into the sinking fund provided for in such Indenture in addition to interest; and that the amounts so deposited be applied to the redemption of Notes outstanding under both such issues.

Upon motion duly made, seconded and carried, it was

RESOLVED that the President or Vice President and Secretary of this corporation, as owner and holder of certain Cab Sales and Parts Corporation Ten-Year 6% Collateral Trust Gold Notes secured by a Collateral Trust Agreement dated as of May 1, 1931, between Cab Sales and Parts Corporation and Foreman-State Trust and Savings Bank, Trustee, as amended (under which The First National Bank of Chicago is acting as Successor-Trustee) (known as Trust No. 17221), are hereby authorized to direct The First National Bank of Chicago, as Trustee, to execute a Supplemental Indenture dated as of January 3, 1938, in substantially the form presented to this meeting, between Cab Sales and Parts Corporation and The First National Bank of Chicago, as Trustee, containing provisions that the maturity date of such Notes shall be April 1, 1943, the interest rate 3% per annum until maturity, the sum of $10,000.00 shall be deposited in the sinking fund quarter-annually in addition to the interest requirements, and containing such other terms, provisions and modifications as are approved by the officers of the corporation signing said direction, whose approval of such Supplemental Indenture shall be conclusively evidenced by their execution of such direction.

Upon motion duly made, seconded and carried, it was

RESOLVED that the President or Vice President and the Secretary of this corporation as owner and holder of certain Cab Sales and Parts Corporation 6% Collateral Trust Sinking Fund Gold Notes secured by a Collateral Trust Agreement dated as of October 1, 1932, between Cab Sales and Parts Corporation and First Union Trust and Savings Bank, Trustee, as amended (under which The First National Bank of Chicago is acting as Successor-Trustee) (known as Trust No. 17222), are hereby authorized to direct The First National Bank of Chicago, as Trustee, to execute a Supplemental Indenture dated as of January 3, 1938, in substantially the form presented to this meeting, between Cab Sales and Parts Corporation and the First National Bank of Chicago, as Trustee, containing provisions that the maturity date of such Notes shall be April 1, 1943, the interest rate 3% per annum until maturity, the sum of $3,750.00 shall be deposited in the sinking fund quarter-annually in addition to the interest requirements, and containing such other

2054 terms, provisions and modifications as are approved by the officers of the corporation signing said direction, whose approval of such Supplemental Indenture shall be conclusively evidenced by their execution of such direction.

The chairman thereupon stated that Benzoline Motor Fuel Co., a wholly owned subsidiary of this corporation, owns $160,000.00 of the Ten-Year 6% Collateral Trust Gold Notes of Cab Sales and Parts Corporation secured by Collateral Trust Agreement dated May 1, 1931, and that the Board of Directors of Benzoline Motor Fuel Co. had at its meeting held immediately preceding this meeting adopted resolutions in the exact words of the resolutions heretofore adopted by this Board of Directors in respect to the release of certain property pledged under said Collateral Trust Agreement of May 1, 1931, as amended, and in respect to authorizing The First National Bank of Chicago, as Trustee, to execute the Supplemental Indenture dated as of January 3, 1938, amending said Collateral Trust Agreement of May 1, 1931.

Upon motion duly made, seconded and carried, it was

RESOLVED that the action of the Board of Directors of Benzoline Motor Fuel Co. in adopting appropriate resolutions authorizing the officers of that company to execute and deliver directions to The First National Bank of Chicago, as Trustee, authorizing said Bank to release certain property pledged under that certain Collateral Trust Agreement dated as of May 1, 1931, as amended, and authorizing said Bank to execute a Supplemental Indenture dated as of January 3, 1938, amending said Collateral Trust Agreement dated as of May 1, 1931, be and the same is hereby ratified, confirmed and approved.

* * *

Upon motion duly made, seconded and unanimously carried, the following resolution was adopted:

RESOLVED that the Corporation maintain its New York office and principal office at 10 Cedar Street, Borough of Manhattan, City, County and State of New York, and keep in said principal office or elsewhere in the State of New York as the President may approve all its books, records and other properties, other than cash and securities and any other assets which by reason of their character it would be inconvenient or impossible to keep at said office, and that the President

and the Secretary, and each of them, be and they hereby severally are authorized to lease such space, remove such books, records and other property thereto, and take such other action as may be necessary or convenient to effect the opening of the principal office of the Corporation at 10 Cedar Street, Borough of Manhattan, City, County and State of New York. * * *

Upon motion duly made, seconded and unanimously carried, the following preambles and resolutions were adopted:

2055 WHEREAS it has been proposed that a stock insurance company be organized under the laws of the State of New York, or under the laws of such other state as may be selected for the purpose, to insure operators of taxicabs against risks incidental to such operation, having a paid-in capital and surplus of $500,000.00; and

WHEREAS it is proposed that this corporation subscribe for approximately $249,000.00 of the paid-in capital and surplus of such insurance company, and in the judgment of this Board of Directors it would be to the best interests of this company to become such a subscriber to the stock of said proposed insurance company, subject to the terms and conditions hereinafter set forth;

NOW THEREFORE, BE IT RESOLVED that the proper officers of this corporation be and they are hereby authorized to proceed with such other taxicab operators as they may approve and as are interested in becoming stockholders of said insurance company to organize such a corporation under the laws of such state and with such name, capital and powers and with such rights, privileges, restrictions and qualifications in respect of the stock thereof as may be approved by such officers, subject to the approval of the corporation's general counsel of the legality of the proposed corporation and other legal aspects of the transaction.

Gov. Ex. 124. (December 21, 1938. Waiver of Notice of Directors Meeting of Federated Enterprises, Inc., With Attached Agreement dated December 21, 1938, between Federatel Cab Sales, Chicago Yellow, and Benzoline)

FEDERATED ENTERPRISES, INC.

WAIVER OF NOTICE OF SPECIAL MEETING OF THE BOARD OF DIRECTORS

We, the undersigned, being all of the directors of Federated Enterprises, Inc., an Illinois corporation, do hereby

waive notice of the time, place and purpose of the holding of a special meeting of the Board of Directors, and consent that said meeting shall be held at 1401 West Jackson Boulevard, Chicago, Illinois, on the 21st day of December, 1938, at the hour of three o'clock P. M., for the purpose of voting upon a proposition to amend the Articles of Incorporation by changing the name of the corporation to Cab Sales and Parts Corporation, and for the transaction of such other business as may come before the meeting.

IN WITNESS WHEREOF we have hereunto subscribed this 21st day of December, 1938.

s/ M. M. SOKOLL
M. M. Sokoll

s/ A. C. McEVOY
A. C. McEvoy

s/ JULIUS JESMER
Julius Jesmer

THIS AGREEMENT made as of this 21st day of December, 1938, between Federated Enterprises, Inc., an Illinois corporation (hereinafter called "Federated"), as party of the first part; Cab Sales and Parts Corporation, a Delaware corporation (hereinafter called "Cab Sales"), as party of the second part; Chicago Yellow Cab Company, Inc., a New York corporation (hereinafter called "Yellow"), as party of the third part; and Benzoline Motor Fuel Co., an Illinois corporation (hereinafter called "Benzoline"), as party of the fourth part;

WITNESSETH:

WHEREAS, Benzoline is the owner and holder of $160,000.00, and Yellow is the owner and holder of $190,000.00, aggregate principal amount of Ten-Year 6% Collateral Trust Gold Notes of Cab Sales, issued pursuant to and constituting all of the Notes now outstanding under a Collateral Trust Agreement between Cab Sales and The First National Bank of Chicago, as Trustee (being successor to Foreman-State Trust and Savings Bank, as Trustee), dated May 1, 1931, as amended by Supplemental Indentures dated respectively October 21, 1932, August 1, 1934, March 1, 1935, October 1, 1935, and January 3, 1938 (said Collateral Trust Agreement as amended by said Supplemental Indentures being hereinafter referred to as No. 1 Indenture and the Notes issued and outstanding

thereunder being hereinafter referred to collectively as No. 1 Notes); and

WHEREAS, Yellow is the owner and holder of $138,750.00 aggregate principal amount of 6% Collateral Trust Sinking Fund Gold Notes of Cab Sales, issued pursuant to and constituting all of the Notes now outstanding under a Collateral Trust Agreement between Cab Sales and The First National Bank of Chicago, as Trustee (being successor to First Union Trust and Savings Bank of Chicago, as Trustee), dated October 1, 1932, as amended by Supplemental Indentures dated respectively August 1, 1934, March 1, 1935, October 4, 1935, and January 3, 1938 (said Collateral Trust Agreement as amended by said Supplemental Indentures being hereinafter referred to as No. 2 Indenture and the Notes issued and outstanding thereunder being hereinafter referred to collectively as No. 2 Notes); and

WHEREAS, Federated owns all of the issued and outstanding shares of the capital stock of Cab Sales and desires to dissolve Cab Sales upon the terms and conditions
2057 hereinafter set forth, to which the other parties hereto consent and agree; and

WHEREAS, Cab Sales is the present owner, and Federated upon the dissolution of Cab Sales will become the owner, of 60,375 shares of Checker Taxi Company, a Delaware corporation (hereinafter called "Checker") which are all of the issued and outstanding shares of Checker, except 625 shares held by others, and of which 59,625 shares are pledged as collateral security under the No. 1 Indenture and under the No. 2 Indenture:

NOW, THEREFORE, in consideration of the premises, the mutual promises of the parties hereinafter set forth and other good and valuable considerations, receipt whereof is hereby acknowledged, IT IS MUTUALLY AGREED as follows:

1. Yellow and Benzoline hereby consent to the dissolution of Cab Sales and release Cab Sales from performing or complying with any requirement contained in the No. 1 Indenture or the No. 2 Indenture which may prohibit such dissolution. Such consent and release, however, are given by Yellow and Benzoline on condition that Cab Sales shall continue liable upon the No. 1 Notes and the No. 2 notes according to their tenor and effect and upon the No. 1 Indenture and the No. 2 Indenture as therein provided, and that the collateral securities now pledged under the No. 1 Indenture and No. 2 Indenture shall, except as hereinafter otherwise pro-

vided, continue to secure the Notes respectively secured by each of said Indentures and the performance of the covenants of Cab Sales contained in each of said Indentures.

2. Federated hereby guarantees to Yellow and Benzoline, so long as they are owners or holders of any of the No. 1 Notes, prompt and punctual payment of the principal of and interest on the No. 1 Notes as and when said principal and interest may become due, and further guarantees to Yellow and Benzoline as aforesaid performance of all of the covenants and agreements contained in the No. 1 Indenture which are to be performed by Cab Sales, to the same extent as if Federated were the maker of the No. 1 Notes and a party to the No. 1 Indenture instead of Cab Sales.

3. Federated hereby guarantees to Yellow, so long as it is the owner or holder of any of the No. 2 Notes, prompt and punctual payment of the principal of and interest on the No. 2 Notes as and when said principal and interest may become due, and further guarantees to Yellow performance of all of the covenants and agreements contained in the No. 2 Indenture which are to be performed by Cab Sales, to the same extent as if Federated were the maker of the No. 2 Notes and a party to the No. 2 Indenture instead of Cab Sales.

4. Federated further guarantees performance of all of the covenants and agreements by Cab Sales to be performed and contained in that certain agreement dated January 3, 1938, between Yellow and Cab Sales, in respect to the purchase of gasoline, lubricating oils and other petroleum products used by Cab Sales and Checker in conducting their taxicab business in Chicago, and Federated agrees that said contract shall remain in full force and effect and be binding upon Federated and Checker so long as Yellow or any of its subsidiaries own any of the new notes to be issued by Federated as provided in Paragraph 6. Federated further guarantees performance of all of the covenants and agreements to be performed by Cab Sales or Checker and contained in that certain contract dated as of January 3, 1938, between Yellow Cab Company, a Main corporation and a wholly owned subsidiary of Yellow, and Cab Sales and Checker, and Yellow agrees for itself and on behalf of the said Yellow Cab Company that Federated

and Checker shall have all of the benefits which Cab Sales or Checker are entitled to receive under the contracts mentioned in this paragraph.

Federated further guarantees the prompt and punctual payment of all other obligations of Cab Sales which may be held by Yellow or Benzoline at the time of the dissolution of Cab Sales and the prompt and punctual performance of all other covenants and agreements by Cab Sales to be performed and contained in any contracts existing at the time of the dissolution of Cab Sales and to which Yellow or Benzoline may be parties entitled to such performance.

5. Federated agrees to dissolve Cab Sales on or prior to December 31, 1938, and ~~either~~ immediately before or after such dissolution, to transfer and assign or cause to be transferred and assigned to Federated, pursuant to a Plan of Liquidation, all of the assets, business and activities of Cab Sales.

6. Federated agrees to issue in full payment and cancellation of the No. 1 Notes and No. 2 Notes within sixty (60) days after the date of this Agreement notes of Federated having the same aggregate principal amount as the combined aggregate principal amounts of the No. 1 Notes and the No. 2 Notes and having denominations, maturity dates, rate of interest and other terms and conditions substantially the same as the No. 1 Notes and the No. 2 Notes. Said new notes of Federated will be secured by a pledge of the same collateral security which is now pledged under the No. 1 Indenture and the No. 2 Indenture, plus the 750 shares of Checker now owned by Cab Sales and not pledged under either the No. 1 Indenture or the No. 2 Indenture and all other shares of Checker acquired by Federated either before or after the execution of said new notes. Said new notes shall be issued under and pursuant to a new Indenture between Federated and The First National Bank of Chicago, as Trustee, which shall contain substantially the same provisions as are contained in the No. 1 Indenture and the No. 2 Indenture, except that permission shall be granted to Federated to pledge under said new Indenture in substitution for the stock of Checker a proportionate number of the issued and outstanding shares of any
2059 other corporation which may own and operate the taxicab business now owned and operated by

Checker and Cab Sales, and except that no payment need be made to the Trustee under the new indenture on account of any sinking fund to be provided therein other than (i) $13,750.00 on each quarterly payment date and interest to be paid under said Indentures in respect of the redemption of notes from moneys in the sinking fund, as now provided in No. 1 Identure and No. 2 Indenture, (ii) dividends when received on the stock of Checker Taxi or any successor of Checker Taxi, and (iii) net income realized by Federated from any taxicab business directly or indirectly conducted by it. Concurrently with the delivery of said new notes of Federated to Yellow, and Benzoline in the principal amounts to which each of them will be entitled, Yellow and Benzoline shall surrender for cancellation, to the Trustee under the No. 1 Indenture and the Trustee under the No. 2 Indenture, the No. 1 Notes and the No. 2 Notes respectively outstanding under each of said indentures and held by Yellow and Benzoline. Said Trustees shall thereupon cancel the said No. 1 Notes and the No. 2 Notes so surrendered to them respectively and the No. 1 Indenture and the No. 2 Indenture and deliver the collateral security pledged thereunder to the Trustee under the new Indenture to secure the new notes of Federated. Delivery of said new notes of Federated shall be accompanied by an opinion of counsel for Federated in form satisfactory to Yellow and Benzoline as to the validity of said new notes and Indenture of Federated, and stating that by virtue of the dissolution of Cab Sales and the bills of sale, assignments and other instruments in writing executed and delivered by Cab Sales to Federated, all of the assets and activities of Cab Sales have become legally vested in Federated. Said opinion shall also state that Checker is a legally organized and existing corporation authorized to conduct the business in which it is engaged. The delivery of said new notes of Federated shall also be accompanied by the delivery of a balance sheet of Federated showing in detail its assets and liabilities as of a date which shall be as nearly current to the date of the delivery of said notes as may be practicable.

In Witness Whereof each of the parties hereto has caused this instrument to be executed on its behalf and

under its corporate seal by its duly authorized officers on the day and year first above mentioned.

Attest:
A. C. McEvoy,
Secretary

FEDERATED ENTERPRISES, INC.,
By M. M. Sokoll, *President*

Attest:
Julius Jesmer,
Secretary

CAB SALES AND PARTS CORPORATION
By Jos. McMath,
Vice President

Attest:
R. H. Bieze, *Secretary*

CHICAGO YELLOW CAB COMPANY, INC.
By Benjamin Samuels,
President

Attest:
R. H. Bieze, *Secretary*

BENZOLINE MOTOR FUEL CO.
By Benjamin Samuels,
President

2060 *Gov. Ex. 125 (February 6, 1939, Memorandum, Oakland to Freimark)*

The Checker Cab stock which was formerly in the name of Federated Enterprises, Inc., and owned by Cab Sales & Parts Corporation, has now been transferred into the name of Cab Sales & Parts Corporation.

Gov. Ex. 126 (July 24, 1942, Minutes of Directors Meeting of Cab Sales.)

Present: M. M. Sokoll
Julius Jesmer

being and constituting a majority of the Directors and a quorum.

Mr. Sokoll, the Vice-President, called the meeting to order and acted as Chairman thereof, and Mr. Jesmer, the Secretary, recorded the minutes of the meeting.

Upon motion duly made and seconded, the following resolution was duly and unanimously adopted: Be it

RESOLVED, That this corporation shall borrow from Chicago Yellow Cab Company, Inc., the sum of $100,000.00 and shall execute its installment note payable to the order of Richard Clauson bearing the date of July 24, 1942, payable in the following installments:
$5,000.00 due September 1, 1942
$5,000.00 due October 1, 1942
$5,000.00 due November 1, 1942
$5,000.00 due December 1, 1942

$5,000.00 due January 1, 1943
$5,000.00 due February 1, 1943
$5,000.00 due March 1, 1943
$5,000.00 due April 1, 1943
$5,000 due May 1, 1943
$5,000.00 due June 1, 1943
$5,000.00 due July 1, 1943
$45,000.00 due August 1, 1943

and to secure the payment of said note, this corporation shall execute and deliver a chattel mortgage conveying two hundred (200) of its taxicabs to said Richard Clauson; and be it further

RESOLVED: That the Vice President be and he is hereby authorized to execute the aforementioned note and that the President and Secretary, or such other officers of this corporation as may be necessary are hereby directed and authorized to sign and execute the chattel mortgage hereinabove referred to, and all other documents that may be necessary to fully carry out the intent and purpose of this resolution.

2061 — *Gov. Ex. 127 (July 29, 1942, Minutes of Directors Meeting of Checker)*

Present: M. M. Sokoll — Jos. McMath
George McDonald — Julius Jesmer
A. C. Flynn

being and constituting the entire Board of Directors of the company.

Mr. Sokoll, the President, called the meeting to order, and Miss Flynn, the Secretary, recorded the minutes thereof.

The President informed the members of the Board that Cab Sales and Parts Corporation had made a request for a loan from Checker Taxi Company in the sum of $181,650.00, said loan to be evidenced by a demand note bearing interest at the rate of 3% per annum and secured by the pledge of the following securities: (1) 6,960 shares of the capital stock of General Transportation Casualty & Surety Company; (2) 5,679 shares of the capital stock of Chicago Yellow Cab Company; (3) $77,000.00 par value of bonds of Parmelee Transportation Company 6% convertible debentures, maturing April 1, 1944; and stated to the Board that, in his opinion, the value of the securities to be pledged to secure the payment of said loan, is in excess of the amount of the loan requested.

Thereupon, on motion duly made and seconded, the following resolution was duly and unanimously adopted:

RESOLVED: That this corporation lend to Cab Sales and Parts Corporation the sum of $181,650.00, said loan to be evidenced by a demand note of Cab Sales and Parts Corporation, dated July 29, 1942, bearing interest at the rate of 3% per annum, and secured by:

1: 6,960 shares of the capital stock of General Transportation Casualty & Surety Company;

2: 5,679 shares of the capital stock of Chicago Yellow Cab Company;

3: $77,000.00 par value of bonds of Parmelee Transportation Company 6% convertible debentures maturing April 1, 1944.

Gov. Ex. 128 (Sept. 17, 1942, Minutes of Directors Meeting of Checker)

Present: M. M. Sokoll, A. C. Flynn, George McDonald, Joseph McMath, Julius Jesmer

being all of the Board of Directors and a quorum.

2062 Mr. Sokoll, President of the Corporation, called the meeting to order and presided thereat. Miss Flynn, Secretary of the Corporation, acted as Secretary of the meeting and kept the minutes thereof.

* * *

Upon motion duly made and seconded, the following resolution was unanimously adopted:

RESOLVED that this Corporation sell to Cab Sales and Parts Corporation, an Illinois corporation, all of its furniture, fixtures, office and garage equipment for the sum of $23,000 in cash, and the proper officers of the Corporation are authorized, directed and empowered to deliver an appropriate bill of sale or other instrument effecting the transfer of said personal property against payment of said purchase price therefor.

The Secretary then presented to the meeting a proposed form of contract, effective October 1, 1942, expiring December 31, 1945, with Cab Sales and Parts Corporation, providing for the use of the taxicab licenses of this Corporation during said period for the sum of $15.00 per license per month as therein set forth.

After a full discussion of the terms and provisions of said contract, the following resolutions were unanimously adopted:

RESOLVED that the form and terms and provisions of the proposed contract to be entered into with Cab Sales and Parts Corporation, an Illinois corporation, providing for the use of the taxicab licenses of this Corporation at the rate of $15.00 per license per month from October 1, 1942 to and including December 31, 1945, as therein set forth, be and the same are in all respects approved, and the President of the Corporation or any Vice-President be and he hereby is authorized and directed to execute and deliver a contract in substantially said form with Cab Sales and Parts Corporation, and the proper officers of the Corporation are authorized, directed and empowered to take all action that may be necessary or convenient to fully perform the same on behalf of this Corporation.

Gov. Ex. 129 (Plaintiff's Interrogatory No. 2)

To Checker. With respect to your denial of part of the allegations of paragraph 3 (f) of the amended complaint, state:

(a) The number of motor vehicles suitable for use as taxicabs owned by you at the end of each calendar year from 1929 to 1946, inclusive;

(b) The number of motor vehicles suitable for use as taxicabs, to which you held title at the end of each calendar year from 1929 to 1946, inclusive;

(c) What property was owned by Checker directly and indirectly, on August 29, 1947, other than an interest
2063 in 1,000 taxicab licenses issued to it by the City of Chicago; and

(d) Whether Checker ever acquired, either directly or indirectly, any of the assets of Checker Taxi Company, an Illinois corporation. If it did, state the dates they were acquired.

Gov. Ex. 130 (Checker's Answer to Plaintiff's Interrogatory No. 2)

(a) and (b). During the years 1929—1946 inclusive, Checker Taxi Company, an Illinois corporation, held title to all licensed cabs which were operated in the City of Chicago under the name "Checker".

(c) Checker's balance sheet as of August 31, 1947 shows the following assets: cash, $90,755.87; equipment, furniture,

fixtures, etc. (1,000 taxicabs), $1,000; prepayments, $14,416.69. No material change in this balance sheet occurred between August 29, 1947 and August 31, 1947.

(d) Yes—on or about January 12, 1932.

Gov. Ex. 131 (September 21, 1942, Minutes of Directors Meeting of Cab Sales)

Present: M. M. Sokoll
Julius Jesmer
George McDonald,

being all of the directors of the Corporation and a quorum.

Mr. McDonald, President of the Corporation, called the meeting to order and presided thereat. Mr. Jesmer, Secretary of the Corporation, acted as Secretary of the meeting and kept the minutes thereof.

The Secretary then presented to the meeting a proposed form of contract with Checker Taxi Company relating to the leasing of 1,000 hack licenses in the City of Chicago for a period beginning October 1, 1942 and expiring December 31, 1945, for the consideration therein set forth.

After due discussion of the terms and conditions of the proposed form of contract, the following resolutions were unanimously adopted:

RESOLVED that the form and terms and provisions of the proposed contract with Checker Taxi Company relating to the leasing of certain licenses in the City of Chicago, presented to the meeting, be and the same hereby are in all respects approved, and the proper officers of this Corporation are authorized, directed and empowered to execute a contract in substantially said form and to take all action that may be requisite in order to perform said contract on behalf of this Corporation.

• • •

2064 Upon motion duly made and seconded, the following resolution was unanimously adopted:

RESOLVED that this Corporation purchase from Checker Taxi Company its office furniture, fixtures and garage equipment for the sum of $23,000.00, and the proper officers of this Corporation are authorized and directed to make payment of said purchase price upon receiving appropriate instruments providing for the transfer thereof to this Corporation.

The Secretary then presented to the meeting a proposal from Freimark & Co., a limited partnership, making an offer to purchase from this Corporation all of its stock hold-

ings in Checker Taxi Company. Upon motion duly made and seconded the following resolutions were unanimously adopted:

RESOLVED that the offer from Freimark & Co., presented to this meeting, be and the same hereby is accepted, and the proper officers of the Corporation are authorized, directed and empowered to take all action and execute any and all instruments of transfer and assignment that may be requisite in order to vest in Freimark & Co. all of the holdings of this Corporation in the stock of Checker Taxi Company against payment therefor as provided in the offer submitted to the meeting.

* * *

The undersigned, being the sole stockholder of Cab Sales and Parts Corporation, does hereby consent to and authorize all transactions set forth in the foregoing minutes, including but without limitation, the sale of all the stock of Checker Taxi Company held by Cab Sales and Parts Corporation, pursuant to the offer of Freimark & Co. presented to the meeting.

/s/ MORRIS MARKIN
Morris Markin

Gov. Ex. 132 (September 26, 1945, Letter from Sokoll, Prés. Cab Sales to Internal-Revenue Agent in Charge, Chicago, Illinois)

As requested by you we are pleased to give you the following information with respect to the sale by use to Freimark & Co. in 1942 of our holdings in Checker Taxi Company:

As you are no doubt aware, Mr. Morris Markin is the sole owner of all of the capital stock of our Company. Mr. Markin is also the President and principal stockholder of Checker Cab Manufacturing Corporation of Kalamazoo, Michigan. For many years he has had associated with him in his various business interests, Harry Freimark, his confidential financial representative, George McDonald,
2065 operating manager of our Company and Checker Taxi Company, M. M. Sokoll, principal executive of our Company and Checker Taxi Company, Julius Jesner, attorney for his Chicago enterprises, Ralph E. Oakland, First Vice President and Treasurer of Checker Cab Manufacturing Corporation, and James A. King, Vice President and maintenance engineer of Checker Cab Manufacturing

Corporation and its subsidiaries. All of these men have made substantial contributions to the success of Cab Sales and Parts Corporation and Checker Taxi Company, as well as other companies in which Mr. Markin is interested. For some years prior to 1942 it had been Mr. Markin's intention to give these men a participation of some kind in his taxicab enterprises. He finally concluded that this result could be best accomplished by letting these men purchase the controlling interest of Checker Taxi Company from Cab Sales and Parts Corporation at the fair value thereof, thereby making these men full associates in Mr. Markin's taxicab operations in Chicago. The purchase price was mutually agreed upon after taking into consideration the value of the physical assets, the rent to be received from the licenses, and the term of the franchise. The terms of this sale were such as to permit these men to pay the balance of the purchase price, after a substantial down payment, over a period of years out of the earnings of the enterprise.

These men accordingly formed the limited partnership, Freimark & Co., as a vehicle to make the purchase, and the purchase was consummated in September, 1942.

There were two principal reasons why the sale was made in the month of September, 1942. These were as follows:

1. The fiscal year of our Company expired on September 30, 1942. That year, in view of an amendment to the Internal Revenue Code, was the last year in which a capital loss could be deducted for tax purposes against operating income. This reason was an important, although not controlling, factor in determining the time at which the sale was to take place.

2. Mr. Markin, as President of Checker Cab Manufacturing Corporation, in 1942 was converting the factory in Kalamazoo 100% to war work. This conversion program, added to the war contracts that Checker Cab Manufacturing Corporation had then obtained and expected to obtain, necessitated the devotion by Mr. Markin of most of his time in Kalamazoo to the affairs of Checker Cab Manufacturing Corporation (and its subsidiary, Parmelee Transportation Company) and made it necessary for him to devote a lesser portion of his time to the affairs of Checker Taxi Company and Cab Sales and Parts Corporation in their taxicab operations in Chicago.

Mr. Markin accordingly concluded that 1942 was the best time during which his principal associates could be permitted to purchase, on a deferred payment plan, a participation in his taxicab enterprises.

2066 *Gov. Ex. 133 (Plaintiff's Interrogatory No. 21)*

To Markin. With respect to your denial of ownership of stock of Cab Sales, as alleged in paragraph 54 of the amended complaint, state each date that you acquired, directly and indirectly, and that you disposed of, directly and indirectly, stock in Cab Sales, the number of shares and the consideration involved in each transaction, and the sellers and buyers, respectively.

Gov. Ex. 134 (Markin's Answer to Plaintiff's Interrogatory No. 21)

As of December 31, 1934, Mr. Markin owned, directly or indirectly, an aggregate of 977 shares of stock of Cab Sales. Since December 31, 1934, acquisitions and disposals, directly and indirectly, of stock of Cab Sales by Mr. Markin were: (a) on September 5, 1935, a gift of 7 shares to Ralph E. Oakland; and (b) on December 8, 1936, a purchase of 30 shares from Mr. Oakland. Since December 8, 1936, Mr. Markin owned all of the outstanding stock of Cab Sales. During the period December 7-31, 1938, the name of Cab Sales and Parts Corporation, an Illinois corporation, was Federated Enterprises, Inc. The consideration for each acquisition and disposal was cash except that the 7 shares transferred to Mr. Oakland on September 5, 1935, represented a gift.

Gov. Ex. 135 (November 5, 1937, Letter, R. E. Oakland, V. P. and Tr. of CCM, to Mike Sokoll, Pres., Checker)

I am returning herewith the certified copy of the minutes of October 22 and asked Harry Freimark to return the original to you for correction.

It is evident that you misunderstood the purpose of the meeting. The meeting was simply to impower the officers of the corporation to execute an extension agreement between Checker Cab Manufacturing Corporation and Cab Sales and Parts Corporation. This note was not discounted by Cab Sales and Parts Corporation but was given as collateral to the First National Bank on a loan to Checker Cab Manufacturing Corporation.

Will you kindly either correct these minutes or have a new meeting in accordance with the above facts.

Gov. Ex. 136 (November 3, 1938, Letter, R. E. Oakland, V. P. and Tr. of CCM, to M. M. Sokoll, of Checker)

I don't think I told you yesterday that Yellow have now decided to have governors put on and Bieze is going

2067 to issue an order to Transportation Maintenance for this. I suggest that you likewise issue an order to them for your governors. In connection with this, I believe you have already had some discussion with Jack Tuttle with reference to putting automatic chokes on one Unit which is now equipped with manual chokes. Of course, it will be necessary for you to know what to do, as there will be a different kind of fitting for the cabs which are equipped with the automatic chokes.

Please let us know what your decision is so we can be governed accordingly.

Gov. Ex. 137 (November 16, 1938, Letter, Sokoll of Checker, to Oakland of CCM)

In reply to your letter of November third, with reference to governors, I have issued an order for 550 Leibing governors to Transportation Maintenance Corporation at an unknown price.

In connection with the automatic choke assemblies, we find, on investigation, that all of those removed from our Unit 3 fleet were stored in good order and are now on hand for installation so that all installations will be alike.

We await your advice with reference to price and installation arrangements.

Gov. Ex. 138 (January 5, 1939, Letter, R. E. Oakland, V. P. and Tr., CCM, to Sokoll of Checker)

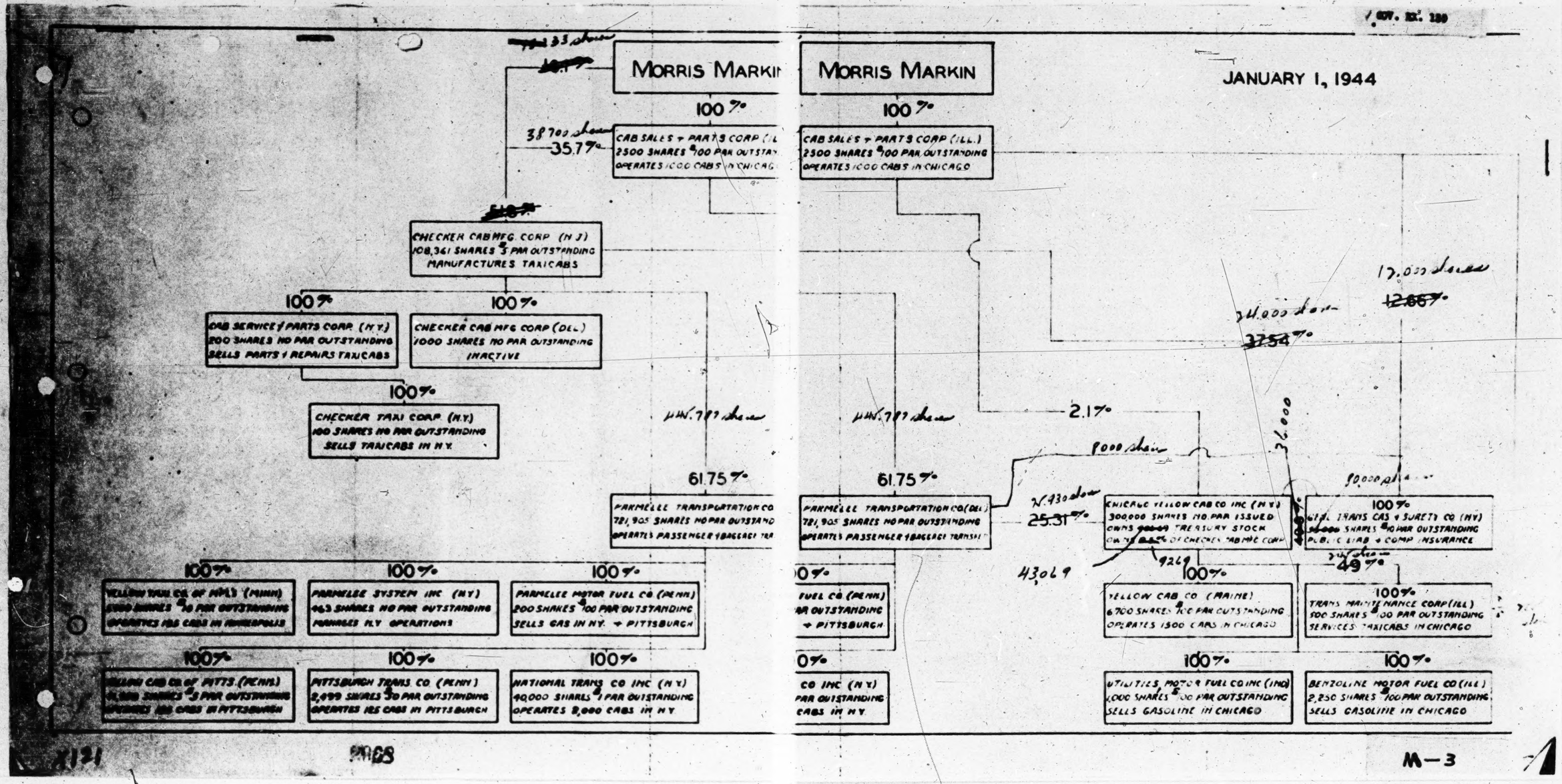
Please arrange with Mr. Richardson to set up an estimated liability for Federal income taxes on the books of Cab Sales and Parts Corporation, before the assets and liabilities are transferred to Federated.

I would also like to have the estimated income tax on Checker Taxi set up before their books are closed.

When Mr. Richardson is ready to make these calculations, if you will notify me, I will come in to Chicago and check the calculations before the liability is set up and before the books of Cab Sales are closed, and the new books of Cab Sales, Illinois, are opened.

GOV. EX. 139

JANUARY 1, 1944



M-3

2069 *Gov't. Ex. 139. (Chart showing relationship of interrelating stock interest between Markin, CCM, Cab Sales, Parmelee, and other related companies.)*

Gov't. Ex. 140. (May 13, 1930, Minutes of Directors' Meeting of Chicago Yellow—)

There were present:

Ernest H. Miller	Edmund S. Higgins
Arthur W. Moore	Martin Lindsay
Thomas B. Hogan	S. H. Kesner
	Benjamin Samuels

constituting a majority and quorum of the Board of Directors of the corporation.

Mr. Arthur W. Moore acted as Chairman of the meeting, and Mr. S. H. Kesner acted as Secretary of the meeting.

• • •

The Chairman stated that Yellow Cab Company, a Maine corporation, has an authorized capital stock of $670,000.00, consisting of 6700 shares of the par value of $1100 each, all of which is owned by this corporation; . . .

• • •

The Chairman further stated that Benzoline Motor Fuel Co., an Illinois corporation has an authorized capital stock of $225,000.00, consisting of 2250 shares of the par value of $100 each, all of which is owned by this corporation, and that the Board of Directors of Benzoline Motor Fuel Co. had, on May 15, 1930, declared a dividend of forty-five per cent (45%) on the capital stock of that corporation, payable June 27, 1930 to stockholders of record at the close of business June 20, 1930.

The Chairman further stated that said dividends receivable from Benzoline Motor Fuel Co. and Yellow Cab Company will be available for dividends on the stock of this corporation, and that the dividends receivable from Benzoline Motor Fuel Co. will provide funds for one dividend of twenty-five cents (25¢) per share on the capital stock of this corporation, and that the dividends receivable from Yellow Cab Company will provide funds for the payment of two dividends each of twenty-five cents (25¢) per share on the capital stock of this corporation.

2070 *Gov't Ex. No. 141. (November 9, 1932, Letter from John E. Merz, Assistant Manager, Motor Equipment Manufacturers' Assn. to Oakland, V. P. of CCM—)*

One of our members has written inquiring whether your company guarantees or is directly responsible for purchases made by the Cab Service & Parts Corporation of New York City, and Yellow Cab Company of 57 East 21st Street., Chicago, Illinois. We would appreciate your advising us whether such is the case or not.

Our records show that Cab Service & Parts Corporation is a 100 per cent owned subsidiary of your company but we have nothing on file to show the relationship between your company and that of Yellow Cab Company, of the address mentioned. We would also appreciate your advising us where the control of Yellow Cab Company lies and whether our understanding that the Cab Service & Parts Corporation is a 100 per cent owned subsidiary of your company is correct.

Gov't. Ex. No. 142. (November 10, 1932. Letter from Oakland, V. P. and T. of C.C.M. to Motor and Equipment Manufacturers Assoc.—)

We have your letter of November 9th.

The Cab Service & Parts Corporation of New York City is a totally owned subsidiary and while we believe its financial position is good enough to warrant the credit that it has asked for, we have in several instances, at the request of certain of our suppliers, guaranteed their account.

The Yellow Cab Company of Chicago is controlled by the Parmelee Transportation Company, which, in turn, is controlled by Checker Cab Manufacturing Corporation . . .

Gov't. Ex. No. 143. (February 22, 1933. Letter E. J. Thelin to Thomas B. Hogan of Chicago Yellow—)

I notice in the Consolicated Balance Sheet of Dec. 31, 1933, under "Assets", that our Company is very much interested in the Waverly Corporation and that they in turn possess a substantial holding of shares of the capital stock of the Chicago Yellow Cab Company.

I also note in the Chicago Tribune under date of Feb. 12th a report made to the Securities and Exchange Commission in Washington by the Waverly Corporation that they owned 127,708 shares of Chicago Yellow Cab Company stock after buying 105 in January.

2071 Not being able to find the name of Waverly Corporation in any of the stock exchange market reports published in the papers or in the "Investors' Pocket Manual", and being curious to know what line of business this concern is in, where located, when and where incorporated, capital stock, financial status, etc., I come to you to ask if you will kindly furnish me with this information.

Gov't. Ex. No. 144. (February 23, 1935. Letter, T. B. Hogan of Chicago Yellow to E. J. Thelin—)

Yellow Cab Company, which is one of the subsidiaries of Chicago Yellow Cab Company, Inc., and wholly owned by it, is the owner of 12,600 shares of the 7% preferred stock of The Waverly Corporation out of a total outstanding of 13,000 shares.

The Waverly Corporation is purely an investment corporation organized under the laws of Delaware and its Chicago office is 160 North LaSalle Street. Among the assets of The Waverly Corporation is the number of shares of Chicago Yellow Cab Company, Inc., stock mentioned in your letter.

In addition to the preferred stock above mentioned owned by Yellow Cab Company, the Yellow Cab Company also owns 10,000 shares of common stock of The Waverly Corporation which is one-half of the total outstanding voting stock of the corporation and for your information may I add that the present officers of The Waverly Corporation consist of three individuals all of whom are directors of Yellow Cab Company and these three officers also constitute the entire Board of Directors of The Waverly Corporation.

If there is any additional information that you may desire in regard to The Waverly Corporation or this company, I shall be most happy to advise you at any time and I thank you for being interested enough in our institution to write.

Gov't. Ex. No. 145. (December 21, 1931, Minutes of Directors Meeting of Yellow—)

There were present: Thomas B. Hogan, Arthur W. Moore, Benjamin Samuels, S. H. Kesner, Edward N. D'Ancona

constituting a majority and quorum of the Directors of the corporation.

The President, Arthur W. Moore, acted as Chairman of the meeting, and the Secretary, Edward N. D'Ancona, acted as Secretary thereof.

• • •

The Chairman stated that this corporation had heretofore purchased and now owns 61,565 shares of the
2072 capital stock without par value of Chicago Yellow Cab Company, Inc., a New York corporation, for which it had paid in the aggregate the sum of $1,566,330.82, which 61,565 shares are carried on the books of this corporation at the cost thereof to this corporation, and recommended that the value of said stock as shown on the books of this corporation, viz: the cost thereof to this corporation, be written down to the present market value of said shares, which is $10 per share; the difference between the cost to this corporation of said 61,565 shares and the present market value thereof, being $950,680.82.

The Chairman further stated that this corporation has a surplus in excess of $5,000,000.00, and that upon so writing down the value of said stock on the books of this corporation it would be necessary to reduce the surplus by said sum of $950,680.82.

The matter was fully considered, and on motion duly made, seconded and carried, the following preamble and resolution were unanimously adopted:

WHEREAS, in the judgment of the Board of Directors of this corporation it is advisable to write down the value, as shown on the books of this corporation, of the 61,565 shares of capital stock of Chicago Yellow Cab Company, Inc. now owned by this corporation from the cost, thereof, viz., $1,566,330.82, to the present market value thereof, viz., $615,650.00, said present market value being $10 per share:

NOW, THEREFORE, BE IT RESOLVED, that the officers of this corporation be and they hereby are authorized, empowered and directed to forthwith write down on the books and records of this corporation the value of said 61,565 shares of stock of Chicago Yellow Cab Company, Inc. from $1,566,330.82, being the cost thereof, to $615,650.00, being the present market value thereof, and to reduce the surplus of this corporation by the sum of $950,680.82, being the amount of such write-down, and said officers are further authorized and directed to forthwith make all appropriate entries on the books and records of this corporation to show such write-down and reduction of surplus.

The Chairman directed the Treasurer to immediately make the entries on the books and records of this corporation as directed in the foregoing preamble and resolution

and to submit to the directors at this meeting the entries as so made.

The Treasurer thereupon proceeded to make the necessary entries on the books and records of this corporation writing down the value of said 61,565 shares of stock of Chicago Yellow Cab Company, Inc. from $1,566,330.82 to $615,650.00, and reducing the surplus of this corpo-
2073 ration by the sum of $950,680.82, being the amount of such write-down, and submitted said entries as made to the meeting, which entries so made and submitted to the meeting were, on motion duly made, seconded and carried, approved.

The Chairman stated that The Waverly Corporation, a Delaware corporation, had offered to purchase from this corporation on or before December 24, 1931, 60,000 shares of the capital stock, without par value, of Chicago Yellow Cab Company, Inc. owned by this corporation, for cash, at the price of $10 per share, being the present market value of said shares, which offer of The Waverly Corporation was submitted to the meeting.

The matter was fully considered, and on motion duly made and seconded and by the affirmative vote of all the directors of the corporation present at this meeting, the following resolutions were unanimously adopted:

RESOLVED, that this corporation sell to The Waverly Corporation, a Delaware corporation, on or before December 24, 1931, 60,000 shares of the capital stock without par value of Chicago Yellow Cab Company, Inc., a New York corporation, owned by this corporation, for cash, at the price of $10 per share, and the proper officers of this corporation be and they hereby are authorized, empowered and directed, for and on behalf and in the name of this corporation and under its corporate seal or otherwise, to sell, assign, transfer and deliver to The Waverly Corporation, certificates for in the aggregate 60,000 shares of the capital stock of Chicago Yellow Cab Company, Inc., duly stamped and endorsed for transfer, upon the payment by said The Waverly Corporation to this corporation of the sum of $600,000 in cash, being at the rate of $10 per share for each share of said 60,000 shares.

Gov't. Ex. No. 146. (June 17, 1932. Minutes of Directors' Meeting of Yellow—)

There were present:

Ernest H. Miller	S. H. Kesner
Arthur W. Moore	Thomas B. Hogan
Benjamin Samuels	Edward N. D'Ancona

constituting a majority and quorum of the directors of the corporation.

Mr. Arthur W. Moore acted as Chairman of the meeting, and Mr. Edward N. D'Ancona acted as Secretary of the meeting.

• • •

Mr. D'Ancona stated that—based upon a conversation which he had with Mr. Miller—while Mr. Miller did not express himself, Mr. D'Ancona gathered the impression that it was likely that Mr. Miller might be able to come to Chicago and devote all or a substantial part of his time to the business of the corporation; that so far as he,
2074 Mr. D'Ancona, was concerned, he felt it would be very much in the interest of this corporation if this could be accomplished; that he had no formal proposition to make or request at this time; he merely wanted to lay the matter before the Board. Thereupon, each and every member of the Board present, except Mr. Miller, expressed himself in favor of Mr. Miller's coming to Chicago for such purpose. Mr. Miller thereupon thanked the Board for their expressions of confidence.

Mr. Miller stated that he thought it possible that the Waverly Corporation would, in addition to its present holdings, buy up to 50,000 shares of the capital stock of Chicago Yellow Cab Company, Inc., at $7.00 per share, and that approximately $400,000 would be required for this purpose, and for the payment of certain other liabilities of The Waverly Corporation and for its general corporate purposes.

The question of whether this money be obtained through an increase of the capital stock of The Waverly Corporation or by this corporation loaning said sum to The Waverly Corporation, then came up for consideration. Each director expressed himself in favor of having The Waverly Corporation buy up to 50,000 additional shares of the capital stock of Chicago Yellow Cab Company, Inc., and on motion duly made, seconded and carried, and by the affirmative vote of all directors of the corporation present at this meeting, the following resolution was unanimously adopted:

RESOLVED, that the sum of $400,000 required by The Waverly Corporation be obtained either—

1. By increasing its capital stock and the sale of such increased stock to this corporation, or

2. By this corporation loaning to The Waverly Corporation the sum of $400,000, as shall be determined by Ernest H. Miller and counsel for this corporation.

FURTHER RESOLVED, that upon such determination being made by Ernest H. Miller, and counsel for this corporation, the officers of this corporation are hereby authorized and directed to take all steps and do all things necessary, proper or advisable to provide said The Waverly Corporation with said sum of $400,000 in the manner so determined by the said Ernest H. Miller and counsel for this corporation.

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The question of this corporation purchasing from Benzoline Motor Fuel Co. all the Benzoline and lubricating oils belonging to said Benzoline Motor Fuel Co. as at the 20th day of June, 1932, then came up for consideration, and on motion duly made and seconded and by the affirmative vote of all the directors of the corporation present at this meeting, the following resolution was unanimously adopted:

2075 RESOLVED, that this corporation purchase from Benzoline Motor Fuel Co. all of the Benzoline and lubricating oils belonging to said Benzoline Motor Fuel Co. as at the 20th day of June, 1932, at the following respective prices:

Benzoline – 15 cents per gallon (tax included),
Lubricating oil – 24 cents per gallon.

Gov't. Ex. No. 147. (February 21, 1944. Letter from S. G. Morse, Trust Officers of Continental Illinois National Bank & Trust Company to Dudley F. Jessopp—)

In accordance with your letter of February 4, and the request of Mr. Cook of the Chicago Yellow Cab Company, we have examined the dividend checks issued by us as dividend disbursing agent for the Chicago Yellow Cab Company and from those checks have determined the names of the stockholders who held 10% or more at the last dividend disbursing period for the years 1929 to 1934, both inclusive.

We list below the name of such stockholder and the number of shares held by each on December 1, of each year.

Payable Date	Stockholder	Number of Shares Held
Dec. 1, 1929	Parmelee Transportation Co...	115,169
Dec. 1, 1930	Parmelee Transportation Co...	115,169
Dec. 1, 1930	Fayette F. Parsons.....	46,081
Dec. 1, 1931	Parmelee Transportation Co...	115,169
Dec. 1, 1931	Fayette F. Parsons.....	50,118
Dec. 1, 1932	The Waverly Corporation.....	107,069
Dec. 1, 1932	Parmelee Transportation Co...	75,000
Dec. 1, 1933	Parmelee Transportation Co...	48,000
Dec. 1, 1933	The Waverly Corporation.....	112,104
Dec. 1, 1934	The Waverly Corporation.....	125,955

Gov't. Ex. No. 148. (July 31, 1931. Letter, R. H. Bieze, Treasurer of Yellow, to Philip M. Riesterer of First National Bank of Chicago.—)

On July 20, 1931 at the close of the transfer business of the Chicago Yellow Cab Company, Inc., you were holding for us 51,419 shares of stock of the Chicago Yellow Cab Company, Inc.

Of this amount, there were 50,118 shares in the name of Fayette F. Parsons of which 55 shares were held in this office and 300 shares are on deposit at the Foreman State Trust & Savings Bank as collateral on a lease, and the balance is held in your office.

You also are holding 1301 shares of Chicago Yellow Cab Company, Inc., stock in the name of Sol H. Kesner on which dividends will be mailed directly to 57 East 21st
2076 Street. On August 1, 1931 when dividends are paid, you will kindly favor us with a letter or check to the effect that the Yellow Cab Company has received dividends on 50,118 shares of Chicago Yellow Cab Company, Inc., stock or $12,529.50.

Gov't. Ex. No. 149. (November 22, 1932. Minutes of Directors' Meeting of Parmelee—)

Present: E. S. Higgins, Paul C. L'Amoreaux, Levin Rank being all of the Board of Directors in office and a quorum.

Mr. L'Amoreaux, Chairman of the Executive Committee, called the meeting to order and was, upon motion duly made and seconded, appointed Chairman thereof. Mr. Rank, Secretary of the Corporation, acted as Secretary of the meeting and kept the minutes thereof.

• • •

Mr. L'Amoreaux then stated that he had arranged for the renewal of the Management Contract between the Transportation Management Corporation, a wholly owned subsidiary of this Corporation, and Yellow Cab Company,

but that as a condition to such renewal Yellow Cab Company had insisted that Mr. Ernest H. Miller be re-employed by The Transportation Management Corporation for the purpose of supervising the performance of the management services. Mr. Miller had agreed to become re-employed by The Transportation Management Corporation for such purpose, provided Yellow Cab Company offered him some inducement for so doing, and Yellow Cab Company had agreed to sell to him a substantial stock interest in The Waverly Corporation, which in turn owned a large number of shares of the stock of Chicago Yellow Cab Company, Inc. He further stated that, beneficial as the Management Contract was to this Corporation, he felt that it would be necessary for, and of great value to, this Corporation to join with The Waverly Corporation for the purpose of jointly voting the respective shares of stock held by this Corporation and The Waverly Corporation in Chicago Yellow Cab Company, Inc., and to that end it was proposed to place such stock in a voting trust, in which Mr. Miller was to be one Voting Trustee, and an impartial individual satisfactory to all parties to be the third Voting Trustee. He pointed out to the Board of Directors that if such voting trust was formed this Corporation would exercise through its Voting Trustee control over approximately 45%
2077 of the outstanding stock of Chicago Yellow Cab Company, Inc. jointly with the other Voting Trustees, which he considered of great benefit to this Corporation in preserving its operation policies and equities in the City of Chicago. He then informed the Board of Directors that the Executive Committee of the majority stockholder of this Corporation had resolved, pursuant to the provisions of Section 64a of the General Corporation Law of Delaware, to consent in writing to the transfer of, and to authorize this Board of Directors to transfer, said shares of the capital stock of Chicago Yellow Cab Company, Inc. to Voting Trustees, upon such terms and conditions as this Board of Directors deemed expedient and for the best interests of this Corporation. He then suggested that the Board of Directors consider the advisability of arranging for the transfer of the stock owned by this Corporation into such a voting trust, and he presented to the meeting a form of Voting Trust Agreement which had been prepared by counsel for the purpose of creating such a voting trust.

Upon motion duly made and seconded, the following resolutions were unanimously adopted:

RESOLVED that this Corporation transfer all or any part of its stockholdings in Chicago Yellow Cab Company, Inc. to Voting Trustees, pursuant to the terms and provisions of the form of Voting Trust Agreement presented to this meeting, and the Vice-President and the Treasurer of this Corporation be and each of them hereby severally is authorized to endorse for transfer and deliver the certificates representing such stock in Chicago Yellow Cab Company, Inc. for such purpose and to execute on behalf of this Corporation as Subscriber, a Voting Trust Agreement in substantially such form.

FURTHER RESOLVED that Mr. Levin Rank be and he hereby is designated the representative Voting Trustee of this Corporation pursuant to the terms and provisions of said Voting Trust Agreement.

Gov't. Ex. No. 150. (November 28, 1932, Minutes of Directors' Meeting of CCM—)

Present: Morris Markin, William Freiday, Henry Weiss, R. W. Ellis, G. Ray Kaiser, Jack Polansky, Ralph M. Oakland, J. Morton Baxter, John H. Tuttle

being a majority of the Board of Directors and a quorum.

Mr. Markin, President of the Corporation, called the meeting to order and presided thereat. Mr. Polansky, Secretary of the Corporation, acted as Secretary of the meeting and kept the minutes thereof.

* * *

2078 . . . the following resolution was unanimously adopted:

RESOLVED that Mr. Ralph E. Oakland be and he hereby is designated and appointed a member of the Executive Committee of the Board of Directors of this Corporation

. . .

The Chairman then stated that this Corporation held in excess of 51% of the outstanding capital stock of Parmelee Transportation Company and that the executives of Parmelee Transportation Company had requested this Corporation, as majority stockholder of said company, to authorize the transfer to Voting Trustees by said company of its stockholdings in Chicago Yellow Cab Company, Inc., upon such terms and conditions as the Board of Directors of said company deemed expedient and for the best interests of said company, and that such request was being made in view of the provisions of Section 64a of the Gen-

eral Corporation Law of the State of Delaware, under which Law said company was incorporated. He then stated that according to his information said company was joining with another holder of a substantial block of stock in Chicago Yellow Cab Company, Inc., in the formation of a Voting Trust in order that the stockholdings of said company and said other large stockholder could be voted in concert for their mutual benefit and for the benefit of Chicago Yellow Cab Company, Inc., and that upon the formation of such Voting Trust the Voting Trustees would hold approximately 45% of the outstanding stock of Chicago Yellow Cab Company, Inc. He further stated it was proposed to have one Voting Trustee a representative of said company, the second Voting Trustee a representative of the other large stockholder, and the third Voting Trustee an impartial individual of standing agreeable to both parties, who would probably be a director of Chicago Yellow Cab Company, Inc.

After full discussion, the following resolutions were, upon motion duly made and seconded, unanimously adopted:

RESOLVED that this Corporation, being the holder of a majority of the voting stock issued and outstanding of Parmelee Transportation Company, a Delaware corporation, execute a consent in writing authorizing the Board of Directors of said company to transfer all or any part of its stockholdings in Chicago Yellow Cab Company, Inc. to Voting Trustees, upon such terms and conditions as the Board of Directors of said company shall deem expedient and for the best interests of said company.

Gov't. Ex. No. 151. (November 30, 1932. Letter, Markin, President of CCM to Board of Directors of Parmelee—)

We, the undersigned, being the holders of a majority of the voting stock issued and outstanding of your company,
hereby consent in writing to the exchange, assign-
2079 ment and transfer to Voting Trustees of all or any
part of the 75,000 shares of Chicago Yellow Cab Company, Inc., a New York corporation, held by your company, upon such terms and conditions as your Board of Directors shall deem expedient and for the best interests of your company, and we, the undersigned, hereby authorize you to so exchange, assign and transfer said stock.

Gov't. Ex. 152. (January 19, 1933. Minutes of Directors' meeting of Yellow—)

There were present: Thomas B. Hogan Frank Fulton
Benjamin Samuels Paul E. Keller
Rudolph H. Bieze Joseph J. White
constituting a majority of the Board of Directors.

Mr. Thomas B. Hogan acted as chairman of the meeting and Mr. Rudolph H. Bieze acted as secretary thereof.

* * *

Upon motion duly made, seconded and unanimously carried, the following preambles and resolutions were adopted:

Be It Resolved, by the Board of Directors of Yellow Cab Company, that there be entered on the Records of the Company this expression of our personal sorrow and sense of loss at the death of Ernest H. Miller, and our appreciation of the great service rendered by him to this Company, its employees, and its Board of Directors.

The Chairman explained that at the meeting of this Board of Directors on November 17, 1932, certain resolutions were adopted authorizing the stockholders and the directors of The Waverly Corporation, all of the common stock of which was owned by this corporation, to effect a recapitalization of The Waverly Corporation, according to which the sum of $95,800.00 was to be transferred from the Surplus Account of The Waverly Corporation to its Common Capital Stock Account, and this corporation was to exchange 6000 shares of the common stock of The Waverly Corporation then held by this corporation for 6958 shares of preferred stock of The Waverly Corporation which were to be created according to such plan of recapitalization. The chairman further explained that upon completion of the balance sheet of The Waverly Corporation as of November 17, 1932, it appeared that $95,800.00 were not available in the Surplus Account for transfer to the Capital Stock Account, as contemplated in the aforesaid resolutions. Accordingly, the directors of The Waverly Corporation, being unable to carry into effect in exact terms the resolutions which had been adopted by this Board of Directors at its meeting on November 17, 1932, with regard to such recapitalization, authorized that $95,000.00 instead of $95,800.00 be transferred from the Surplus Account of The Waverly Corporation to its Common Capital Stock Account and that, in order to make available a surplus of $95,000.00 for such transfer, this corporation be requested to release The Waverly Corporation from the payment of

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$2,665.98 of interest which had accrued to that date on the notes of The Waverly Corporation held by this corporation. The Directors of The Waverly Corporation further requested that this corporation accept 6950 shares instead of 6958 shares of said new preferred stock of The Waverly Corporation in exchange for the 6000 shares of common stock of The Waverly Corporation as originally contemplated. The chairman further explained that resolutions so modifying the plan of reorganization of The Waverly Corporation had been adopted by its directors and its stockholders, and that an amendment to the Certificate of Incorporation of The Waverly Corporation had been filed in the Office of the Secretary of State of the State of Delaware authorizing such modified plan. . . .

Upon motion duly made, seconded and unanimously carried, the following preambles and resolutions were adopted (Mr. Samuels and Mr. White not voting):

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FURTHER RESOLVED that this corporation accept from The Waverly Corporation in exchange for 6000 shares of the common stock of the Waverly Corporation 6950 shares of the new preferred stock of The Waverly Corporation as of January 13, 1933, in lieu of 6958 shares of said new preferred stock as contemplated by the resolutions adopted by this Board of Directors at its meeting on November 17, 1932.

FURTHER RESOLVED that the action taken by the officers, directors and stockholders of The Waverly Corporation in respect of said modified plan of recapitalization be and the same is hereby in all other respects ratified, confirmed and approved.

Mr. Samuels reported that the executrix under the Last Will and Testament of Ernest H. Miller, deceased, had asked this corporation to permit the contract which said Ernest H. Miller had entered into with this corporation as authorized by resolutions of this Board of Directors at its meeting on November 17, 1932, to be assigned to some other person, to be selected by this corporation, and the estate of Ernest H. Miller to be released from all further liability thereunder. Mr. Samuels recommended that resolutions be adopted authorizing such assignment and release.

Upon motion duly made, seconded and unanimously carried, the following preambles and resolutions were adopted:

WHEREAS, pursuant to resolutions adopted by this Board of Directors on November 17, 1932, the President

and Secretary of this corporation, in its name and behalf, had entered into a contract under date of November 17, 1932, with Ernest H. Miller wherein, among other
2081 things, he agreed to purchase 10,000 shares of the Class A stock of The Waverly Corporation for the sum of $25,000.00; and

WHEREAS the said Ernest H. Miller is now deceased and the executrix under his Will desires to assign such contract and be released from any further liability thereunder;

NOW THEREFORE, BE IT RESOLVED that the President or Vice President and the Secretary or Assistant Secretary of this corporation be and they are hereby authorized to approve an assignment of said contract by the Executrix under the Will of Ernest H. Miller and by such other persons as may properly join in such assignment, to such person or persons as the President of this corporation may approve . . .

The chairman further explained that in order to make such 10,000 shares of The Waverly Corporation available for sale to any such other person who may be selected as assignee of the contract with Ernest H. Miller, it was advisable for this Board of Directors to adopt resolutions authorizing the purchase by this corporation from The Waverly Corporation of said 10,000 shares of its Class A stock.

Upon motion duly made, seconded and unanimously carried, it was

RESOLVED that this corporation purchase from The Waverly Corporation 10,000 shares of Class A stock of The Waverly Corporation for the sum of $25,000.00, payable in cash.

FURTHER RESOLVED that the Treasurer of this corporation be and he is hereby authorized to pay the said sum of $25,000.00 to The Waverly Corporation as of this date, upon receipt of a certificate or certificates for 10,000 shares of the Class A stock of The Waverly Corporation.

Upon motion duly made, seconded and carried, it was

RESOLVED that this corporation advance to The Waverly Corporation such funds as it may require to pay the expenses incurred by it in effecting its recapitalization as authorized by this Board of Directors, and the Treasurer of this corporation be and he hereby is authorized to accept in full payment of such advance 10,000 shares of the common stock of The Waverly Corporation fully paid up and non-assessable.

Gov't. Ex. No. 153. (January 17, 1933. Letter Paul L'Amoreaux to Samuels of Yellow—)

My dear Ben:

I am attaching hereto the following:

1—Letter from Mr. Markin to Yellow Cab Company 2082 . offering to take over the Miller position.

2—Form of suggested letter from Yellow Cab Company to Mr. Markin accepting the offer.

3—Draft of suggested minutes for the Yellow Cab Company meeting.

4—Letter from Mr. Markin to Yellow Cab Company setting forth the manner in which the stock of The Waverly Corporation is to be issued.

In view of the fact that I am leaving for an extended trip on the 26th of January, I want to get this matter disposed of and have set the closing date for the 21st, accordingly.

I am enclosing a check for the $5,000. payment together with Mr. Markin's notes maturing January 21st, 1934, and suggest that you issue the stock in accordance with the letter I am enclosing herewith. Have these certificates (except the two certificates for 1000 shares each) endorsed and send to me air mail. Mr. Markin will see to the proper distribution to the others in accordance with our plan, discussed with you.

Am also enclosing form of letter to Mr. Markin for signature by yourself and Tom Hogan *re* payment and will you have the certificates retained endorsed in accordance with the terms of the letter?

Am having all the certificates issued to you so that the other directors can vote on the question involved without being subject to any criticism, and, of course, you can endorse and deliver one of the 1,000 share certificates to Tom Hogan after the deal has been consummated.

Gov't. Ex. 154. (January 19, 1933. Letter Agreement between Markin and Yellow by T. B. Hogan, President, approved by Chicago Yellow by Samuels, President—)

Mr. Morris Markin
1775 Broadway
New York City, New York.

Dear Sir:

We acknowledge receipt of your letter and assignment of January 17, 1933, which was presented to our Board of Directors at their meeting held today. After due consideration by the Board of Directors and after consultation with

our counsel, the Board of Directors determined, in consideration of the benefits which they recognize will accrue to our company and its stockholders by reason of the agreements contained in your letter, to accept you as the contracting party under the terms and provisions of the agreement of November 17, 1932, in lieu of Mr. Ernest H. Miller, deceased, and in addition to release the Estate of Mr. Ernest H. Miller, and the beneficiaries and Executrix of that
2083 Estate, from any further liabilities or obligation under the contract of November 17, 1932. In effecting this novation we have been actuated by the desire to preserve the very excellent management which The Transportation Management Corporation and its principal executives have given us for over three years, and in reliance of your agreement that you will cause this management to be continued as efficiently as we believe it would have been continued with the association of Mr. Ernest H. Miller. We realize that this will entail, on the part of these executives as well as on your part, substantially more time and effort being spent upon our affairs, and in order to preserve the benefits of such management and to prevent interests indifferent or unfriendly to the success of our company from acquiring a voice in its affairs, we are ready and willing, and do hereby agree to sell to you and your associates the 10,000 shares of Class A Stock of The Waverly Corporation, for the consideration and in accordance with the terms set forth in the contract of November 17, 1932.

Accordingly we will be ready to deliver to you certificates representing said shares of stock on the 21st day of January, 1933, against payment of the sum of $25,000. in cash, or if you prefer, the sum of $5,000. in cash and your promissory notes maturing on January 21, 1934, with interest at the rate of six per cent. per annum, for the balance of the purchase price.

The foregoing is written in confirmation of your agreements contained in your letter above described, and in confirmation of your obligation to take up and pay for this stock, to the end that this letter taken in conjunction with your letter above referred to may constitute a contract between us.

Very truly yours,

YELLOW CAB COMPANY
By s/ T. B. HOGAN
President (Seal)

Attest:
s/ R. H. BIEZE
Secretary

The execution of the foregoing letter by Yellow Cab Company is hereby approved.

CHICAGO YELLOW CAB COMPANY, INC.
By s/ BENJAMIN SAMUELS
President (Seal)

Attest:
s/ R. H. BIEZE
Secretary

Gov't. Ex. No. 155. (January 21, 1933. Letter, Markin to Yellow—)

Pursuant to the agreement between us as represented by my letter to you of date January 17th, 1933 and your reply dated January 19th, 1933 concerning the stock of The Waverly Corporation, you are hereby directed to issue the said stock to yourself in the number of shares, as follows:

2084 Two certificates for one thousand (1,000) shares each;

One certificate for forty-six hundred sixty-seven (4,667) shares;

One certificate for twenty-three hundred thirty-three (2,333) shares;

One certificate for six hundred (600) shares;

One certificate for four hundred (400) shares.

Gov't. Ex. 156. (January 30, 1933. Letter Samuels to Markin—)

Enclosed please find 8000 shares Class A Stock of The Waverly Corporation being certificates A1, A2, A5 and A6, in the name of Yellow Cab Company and endorsed in blank.

Please send to me by return mail the temporary certificates which are still in your possession.

Your letter in reference to the contract is also received and we were all glad to hear that you will be out to see us sometime toward the end of the week. Regards to all.

2085 *Gov't. Ex. 157. (April 5, 1933, Minutes of Directors' Meeting of Parmelee.)*

Present: Paul C. L'Amoreaux
Levin Rank
E. S. Higgins
James A. Doherty

being a majority of the Board of Directors and a quorum.

Mr. L'Amoreaux, Chairman of the Executive Committee, called the meeting to order and acted as Chairman thereof.

Mr. Rank, Secretary of the Corporation, acted as Secretary of the meeting and kept the minutes thereof.

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The Chairman then suggested that the Board of Directors consider the disposition of part of the stockholdings of this Corporation in Chicago Yellow Cab Company, Inc. to obtain vitally necessary additional working capital for certain of the operating subsidiaries of this Corporation.

After due discussion the following resolutions were, upon motion duly made and seconded, unanimously adopted:

RESOLVED that this Corporation sell and transfer, from time to time, in the discretion of the Treasurer or the Chairman of the Executive Committee, at a price not less than $7 per share, up to but not in excess of 50,000 of its shares without par value of the capital stock of Chicago Yellow Cab Company, Inc., a New York corporation, to any purchaser obtained therefor, and the Chairman of the Executive Committee and the Treasurer of this Corporation be and each of them hereby severally is authorized, directed and empowered to sell and dispose of such shares at such price to such purchaser as may be obtained therefor.

RESOLVED that the Chairman of the Executive Committee, Paul C. L'Amoreaux, and the Vice-President, E. S. Higgins, and the Treasurer, Levin Rank, be and each of them hereby severally is authorized to endorse on behalf of this Corporation, certificates for up to but not in excess of 50,000 shares without par value of the capital stock of Chicago Yellow Cab Company, Inc., a New York corporation, owned by this Corporation, and to deliver the same to any purchaser thereof, to the end that the same may be duly transferred on the books of Chicago Yellow Cab Company, Inc.

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RESOLVED that Paul C. L'Amoreaux, Chairman of the Executive Committee, and Levin Rank, Treasurer,
2086 be and each of them hereby severally is authorized, directed and empowered to negotiate, execute and deliver on behalf of this Corporation an agreement, in such form and with such provisions as the officer executing the same in his sole discretion shall deem advisable and for the best interests of this Corporation, securing for this Corporation an option to re-purchase said shares without par value of the capital stock of Chicago Yellow Cab Company, Inc., from the purchaser thereof, at any time on or

prior to December 31, 1933, at not more than $7.50 per share, the execution and delivery by such officer of such agreement to be conclusive evidence of the exercise of such discretion.

Gov't. Ex. 158. (April 6, 1933, Minutes of Directors' Meeting of Yellow.)

The following directors were present: Thomas B. Hogan
Benjamin Samuels
S. H. Kesner
Paul E. Keller
Joseph J. White
R. H. Bieze

constituting a majority of the Board of Directors.

Mr. Thomas B. Hogan, the President of the corporation, acted as chairman of the meeting and Mr. R. H. Bieze, the Secretary of the corporation, acted as secretary.

• • •

The chairman thereupon announced that this company had an opportunity to purchase 35,000 shares of the capital stock of Chicago Yellow Cab Company, Inc. at not to exceed $7.00 per share, and recommended that this corporation make such investment and borrow the funds if necessary for that purpose. The directors discussed the advisability of the proposal.

Upon motion duly made, seconded and unanimously carried, it was

RESOLVED that the officers of this corporation be and they are hereby authorized to purchase not to exceed 35,000 shares of the capital stock of Chicago Yellow Cab Company, Inc. at not to exceed $7.00 per share net.

FURTHER RESOLVED that this corporation borrow not to exceed $250,000.00 for the purpose of making such investment and that such borrowing be evidenced by a note or notes of this corporation signed by its President or one of its Vice-Presidents and the Secretary or Assistant Secretary, and under its corporate seal or otherwise, maturing ninety days after date and bearing interest not exceeding 6% per annum.

2087 *Gov't. Ex. 159. (June 20, 1933, Minutes of Directors' Meeting of Parmelee.)*

Present: E. S. Higgins, Levin Rank, James A. Doherty being a majority of the Board of Directors and a quorum.

In the absence of the President of the Corporation, Mr. Higgins, Vice-President of the Corporation, called the meet-

ing to order and acted as Chairman thereof. Mr. Rank, Secretary of the Corporation, acted as Secretary of the meeting and kept the minutes thereof.

• • •

Upon motion duly made and seconded, the following preambles and resolutions were unanimously adopted:

WHEREAS on the 5th day of April, 1933, this Board of Directors did duly resolve and determine to sell and dispose of 50,000 shares without par value of the capital stock of Chicago Yellow Cab Company, Inc., a New York corporation, owned by this Corporation, at a minimum price therein set forth; and

WHEREAS 25,000 of said shares have been duly sold but are subject to an option to repurchase the same from the purchaser thereof; and

WHEREAS this Board of Directors deems it advisable to sell and dispose of all or part of the remaining shares authorized to be sold, pursuant to the above mentioned resolutions, in the open market and to exercise said option to an extent approximating the number of shares so sold in the open market from time to time,

NOW, THEREFORE, BE IT

RESOLVED that the President and the Treasurer of this Corporation be and each of them hereby severally is authorized, directed and empowered to sell from time to time, at not less than $7.50 per share, up to 25,000 shares of the capital stock of Chicago Yellow Cab Company, Inc. owned by this Corporation, said shares to represent the balance of the shares of said stock authorized to be sold at the meeting of the Board of Directors of this Corporation. held on April 5, 1933, and each of said officers be and he hereby is authorized to exercise from time to time, in connection with said sales, the option held by this Corporation on the 25,000 shares heretofore sold, to an extent approximating the sales made as hereinbefore provided.

Gov't. Ex. 160. (June 22, 1933, Minutes of Directors' Meeting of Yellow.)

WHEREAS pursuant to authorization of this Board of Directors the officers of this corporation purchased 25,000 shares of the capital stock of Chicago Yellow Cab Company, Inc. at a price of $7.00 per share on April 8, 1933; and

2088 WHEREAS it later developed that the seller of said stock intended such sale to be made only on condition that the said seller should have the option to repurchase

the same at any time before December 31, 1933, at the price of $7.50 per share, this corporation to receive the dividends on such stock during the interim; and

WHEREAS the seller is willing to sell at the price of $7.00 per share an additional 10,000 shares of said stock, on the condition that this corporation give said seller the option to repurchase the entire 35,000 shares at a price of $7.50 per share at any time before December 31, 1933, it being agreed that this corporation shall meanwhile collect the dividends on said 35,000 shares; and

WHEREAS in the judgment of this Board of Directors the purchase of said 10,000 shares of stock of Chicago Yellow Cab Company, Inc., on condition that this company give an option to the seller of said stock to repurchase the entire 35,000 shares of said stock sold by said seller, is a good investment for the funds of this corporation and such purchase on the aforesaid conditions will settle the controversy which has arisen with said seller with respect to said option, and it is to the best interest of this corporation to purchase said stock;

NOW THEREFORE, BE IT RESOLVED that the proper officers of this corporation be and they are hereby authorized to purchase 10,000 shares of the common stock of Chicago Yellow Cab Company, Inc. at a price not to exceed $7.00 per share, and are further authorized to sign and execute in the name and on behalf of this corporation an agreement with the seller whereby said seller may repurchase the entire (but not a part of) 35,000 shares of Chicago Yellow Cab Company, Inc. stock owned by this corporation at a price of $7.50 per share on or before December 31, 1933, it being understood that this corporation shall collect dividends on said 35,000 shares until said option to repurchase is exercised.

Gov't. Ex. 161. (June 3, 1933, letter from Markin to Samuels.)

I understand that at the last meeting you authorized the purchase from Parmelee Transportation Company of 10,000 additional shares of Chicago Yellow Cab Company, Inc. stock, and at the same time approved the agreement giving Parmelee the right to repurchase both blocks, a total of 35,000 shares, at $7.50 per share on or before December 31, 1933.

Will you kindly send me a copy of the minutes and a letter of confirmation addressed to Mr. Rank.

2089 *Gov't. Ex. 162. (July 14, 1933, letter from Rank, Treasurer of TMC to Samuels, V. P. of Yellow.)*

I am returning herewith the certified copy of resolutions which accompanied your letter of July 6th. Mr. Fuller has suggested a change therein whereby we would be enabled to repurchase 'all or any part of the 35,000 shares', whereas your resolutions call for the repurchase of 'the entire (but not a part of)' the 35,000 shares. The suggested option letter, also prepared by Mr. Fuller, has been written on the theory that this change will be agreeable to you, and provides, as you will notice, for redemption in blocks of not less than 2,000 shares.

If this change presents any difficulties, I would suggest that you hold the matter in abeyance until Mr. Markin and the writer next visit Chicago, which I expect will be some time witnin the next two weeks.)

Gov't. Ex. 163. (July 17, 1933, letter from Samuels to Kirkland, Fleming, Green & Martin.)

In connection with the option proposition mentioned in the minutes of the last meeting of Yellow Cab Co., please note from the enclosed papers the idea of Parmelee Transportation Co. with reference this option. This, of course, would call for an amendment of the proposition as drafted and I believe that this change will meet with the approval of our Board but we will discuss that at the meeting on Thursday and then I can assure you definitely as to that particular feature. It is wholly immaterial, as far as Yellow Cab is concerned, whether the option is to cover 2,000 shares at a time or the full 35,000 because as far as the company is concerned whether we take and keep all of the stock or sell part of it back will be perfectly immaterial.

Gov't. Ex. 164. (March 31, 1934, Minutes of Directors' Meeting of Yellow.)

The following directors were present: Thomas B. Hogan, Paul E. Keller, Benjamin Samuels, R. H. Bieze, Ralph E. Stouffer, Joseph J. White, Frank D. Fulton constituting the entire Board of Directors. Mr. Dwight P. Green was also present.

Mr. Thomas B. Hogan, President of the company, acted as chairman of the meeting, and Mr. R. H. Bieze, Secretary of the company, acted as secretary of the meeting.

• • •

The discussion in reference to the purchase of the 23,730 shares of capital stock of Chicago Yellow Cab Company, Inc. was resumed.

• • •

2090 Upon motion duly made, seconded and unanimously carried, the following resolutions were adopted:

WHEREAS this corporation has been offered the right to purchase 23,730 shares of the capital stock of Chicago Yellow Cab Company, Inc. at the price of $11.50 per share, on condition that the Seller shall have the option to repurchase the same at any time before December 31, 1934, at the price of $12.00 per share; and

WHEREAS in the judgment of the Board of Directors it is advantageous to this corporation to purchase said stock at the price and on the terms and conditions of said offer;

NOW THEREFORE, BE IT RESOLVED that the officers of this corporation be and they are hereby authorized to consummate the purchase of 23,730 shares of the capital stock of Chicago Yellow Cab Company, Inc. at a price not to exceed $11.50 per share, less Federal stock transfer tax of four cents per share, and are further authorized to sign and execute, in the name and on behalf of this corporation, an irrevocable option agreement with the Seller whereby said Seller may repurchase all or any part of said 23,730 shares of Chicago Yellow Cab Company, Inc. stock at a price of $12.00 per share on or before December 31, 1934; . . .

Gov't. Ex. 165. (August 1, 1933, letter from Samuels, V. P. of Yellow to Parmelee.)

As you undoubtedly are aware, for over a year the taxicab situation in Chicago has been in a turmoil, due to uncertain legislative conditions, which has brought about a thorough investigation of all the companies operating taxicabs in Chicago and which investigation has recently been renewed through a new Commission appointed, as a result of the passage of an ordinance the end of June, 1933. The new Commission has organized and is at present making a second thorough investigation of the taxicab situation and all of the companies which are operating taxicabs in Chicago.

The thing from which we have suffered in the last year or so has been considerable newspaper criticism to the effect that there is a taxicab monopoly in Chicago and that this taxicab monopoly is in some way connected with a gigantic

taxicab monopoly spreading over the entire country and that the so called Parmelee System is in effect in control of the operation of Yellow Cab Co. in Chicago.

2091 Of course, your company knows, as well as we do, that there is no such control over the actions of Yellow Cab Co. but we are constantly being criticized in the newspapers and, of course, this is due to the fact that your company has been a large stockholder of Chicago Yellow Cab Co. Inc.

It is further the fact that in the last year Yellow Cab Co. has purchased from your company 25,000 shares of Chicago Yellow Cab Co. Inc. at $7.00 per share and that you have an option to repurchase this stock at $7.50 per share at any time prior to December 31st of this year and in addition thereto, there is pending the purchase of an additional 10,000 shares under the same terms and conditions.

Thus, your holdings in Chicago Yellow Cab Co. Inc., as I understand it, would be reduced to approximately 40,000 shares with the pending contracts completed.

As the result of this recent legislation on rates, we have been compelled to reduce our rate to a basis which may result in Yellow Cab Co. being compelled to operate at a loss for some considerable length of time and if we can manage to divorce ourselves from Parmelee in truth and in fact, this may be the means of convincing the legislative authorities in Chicago that the criticism heretofore made is unjustified.

In view of the situation and inasmuch as your company has at all times co-operated with us and we know that you are convinced that we have at all times co-operated with your company, we feel that it will be best for both companies if some arrangement could be made whereby the option agreements heretofore in existence would be cancelled, with reference to the 35,000 shares above mentioned, and a contract entered into whereby we would be enabled to purchase all of the remaining interest which your company now holds in the stock of Chicago Yellow Cab Co. Inc., and we assume that the fair way of arriving at a proper price would be to take over this stock at the market price as of some certain day to be determined upon by agreement, one of the considerations being the cancellation of these option agreements.

Would you be good enough to submit this matter to your Board, so that we may be able to determine whether or not an arrangement along the lines as indicated in this letter might be effected.

Gov't. Ex. 166. (August 3, 1933, Minutes of Directors' Meeting of Yellow.)

The following directors were present: Thomas B. Hogan, Benjamin Samuels, Frank Fulton Joseph J. White S. H. Kesner, Paul E. Keller R. H. Bieze constituting the entire Board of Directors.

Mr. Thomas B. Hogan, President of the company, acted as chairman of the meeting, and Mr. R. H. Bieze, Secretary of the company, acted as secretary of the meeting.

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Mr. Samuels requested that a resolution prepared by counsel for the corporation in reference to the purchase of a block of stock of Chicago Yellow Cab Company, Inc. be read. The resolution was thereupon read, and is as follows:

WHEREAS on April 8, 1933, this corporation purchased 25,000 shares of the capital stock of Chicago Yellow Cab Company, Inc. at the price of $7.00 per share; it later developed that the seller of said 25,000 shares of stock intended such sale to be made only on condition that said seller should have the option to repurchase the same at any time before December 31, 1933, at the price of $7.50 per share, and in order to obtain said option the seller offered to sell an additional 10,000 shares of said stock at the price of $7.00 per share on condition that this corporation give said seller the option to repurchase the entire 35,000 shares at any time before December 31, 1933, at the price of $7.50 per share; and

WHEREAS, in order to settle the controversy which had arisen between the seller and this corporation, the Board of Directors of this corporation at its meeting held June 22, 1933, authorized the purchase of said additional 10,000 shares of said stock at the price of $7.00 per share and authorized this corporation to give said seller the option to repurchase the entire 35,000 shares of said stock on the terms hereinabove set forth; and

WHEREAS the consummation of said transaction has not yet been effected; and

WHEREAS said seller now makes the following offer to this corporation: That said seller will sell said 10,000 shares of stock owned by it at the price of $7.00 per share, and all of the additional stock of Chicago Yellow Cab Company, Inc. owned by it, in the approximate amount of 40,000 shares, at the price of $12.00 per share (it being understood that said seller shall pay Federal stock trans-

fer tax on all of said stock), and that said seller will cancel any option which it may have to repurchase any of the stock of Chicago Yellow Cab Company, Inc. at any time sold by it to this corporation; and

WHEREAS said stock has a market value in excess of the price asked and in the judgment of this Board of Directors it is advantageous and for the best interests of this corporation that it accept said offer;

NOW THEREFORE, BE IT RESOLVED that the officers of this corporation be and they are hereby authorized to consummate the purchase of 10,000 shares of the capital stock of Chicago Yellow Cab Company, Inc. at the price of $7.00 per share, less Federal stock transfer tax of four cents per share, and are authorized to purchase not to exceed 40,000 shares of said stock at the price of $12.00 per share, less Federal stock transfer tax of four
2093 cents per share, on condition that the seller cancel and terminate any option agreement which it may have to purchase any of the Chicago Yellow Cab Company, Inc. stock at any time sold by it to this corporation.

* * *

Mr. Samuels moved the adoption of the foregoing resolution and the same was seconded by Mr. White.

A discussion was had by the directors concerning the advisability of purchasing said stock. Mr. White stated that in his opinion the purchase of this stock and cancellation of said option would be good business for Yellow Cab Company, and that if the option were cancelled at this time Yellow Cab Company would make approximately $135,000.00 on that transaction alone. He stated that the average price of all of the stock purchased and to be purchased from this seller would be 9¾ and that the market today was 12. The remaining directors concurred in the view that it was good business judgment for this company to make the contemplated investment.

The question of whether or not the purchase of this stock on the terms set forth in said resolution should be authorized by this Board, in view of the fact that a corporation which purports to be the majority stockholder of the seller objected to the sale of this stock, was then discussed. It was the concensus of opinion that the transaction should be consummated only upon the terms and conditions set forth in the resolution in regard to the legal steps, including the consent of the majority of the stockholders of said seller, the action of the seller's Board of Directors, and the opinion of counsel for the seller and for this corporation.

The motion was then put to a vote. All of the directors present voted in favor of the adoption of the resolution with the exception of Mr. Kesner, who was present but not voting. The chairman thereupon declared the resolution duly adopted.

Mr. Bleze, the Treasurer of the corporation, stated that this corporation had a sufficient surplus to pay for the stock hereinabove authorized to be purchased by this corporation, but that all of the company's surplus is not in cash and it would be necessary to make a temporary loan in the amount of approximately $400,000.00 to pay for this stock.

Upon motion duly made, seconded and carried (Mr. Kesner being present but not voting), it was

RESOLVED that this corporation borrow not to exceed $400,000.00 for the purpose of making the investment in the capital stock of Chicago Yellow Cab Company, Inc. hereinabove authorized, and that such borrowing be evidenced by a note or notes of this corporation signed by its President or one of its Vice Presidents and its Secretary or Assistant Secretary, and under its corporate seal or otherwise, payable on or before six months from the date thereof and bearing interest not to exceed 6% per annum.

2094 *Gov't. Ex. 167. (August 3, 1933, Minutes of Directors' Meeting of Parmelee.)*

The Chairman then stated that the Corporation was in great need of working capital and he suggested that the directors consider a proposition to dispose of the remaining holdings of this Corporation in Chicago Yellow Cab Company, Inc., in order to obtain the necessary working capital. The Chairman further stated that Yellow Cab Company in Chicago desired to purchase the holdings of this Corporation for the reasons set forth in a letter from Mr. Samuels, its Vice-President, which he presented to the meeting and a copy of which was, upon motion duly made and seconded, ordered affixed to and made a part of the records of the meeting. The Chairman then pointed out to the directors that the Corporation had very little working capital, that the situation in Chicago was sufficiently uncertain both politically and economically as, in his opinion, to cause such stock holdings to be of an extremely speculative character because of recent reductions in rate, that this Corporation would be required to pay on October 1, 1933, some $90,000 in interest on its Debentures and to pay substantial amounts in the near future under its indemnity

agreements on outstanding public liability claims brought against its subsidiaries in view of the fact that funds to pay such claims had been tied up in the liquidation of New Jersey Fidelity & Plate Glass Insurance Company, and that it was impossible to sell any substantial amount of these stock holdings in the open market. He further pointed out to the directors that Yellow Cab Company had made an offer which, in view of the present condition of this Corporation, presented an advantageous solution to its difficulties and would permit it, if it were in funds, to effect great savings at the present time in settling outstanding personal injury and property damage claims. He stated that in his judgment a sale of these stock holdings would be advisable and he recommended it to the directors.

After full discussion and upon motion duly made and seconded, the following resolutions were unanimously adopted:

RESOLVED that this Corporation sell and dispose of, at a price not less than $12 per share (the same being the present market price of said stock), all or any part of its remaining stockholdings in Chicago Yellow Cab Company Inc., a New York corporation, and the President and the Treasurer of this Corporation be and each of them hereby is severally authorized to negotiate and effect the sale and disposition of said stockholdings on behalf of this Corporation in accordance with the foregoing resolution;

* * *

2095 FURTHER RESOLVED that as part of the consideration for any such sale the Treasurer be and he hereby is authorized to cancel any option arrangements held by this Corporation if he should deem such cancellation necessary to effect any such sale;

Gov't. Ex. 169. (August 22, 1933, letter from Samuels, V. P. of Yellow to Parmelee.)

We are again writing you in reference to the proposed purchase by the Yellow Cab Company of Chicago of the remaining shares of stock of Chicago Yellow Cab Com-
2096 pany, Inc., owned by your company. You will recall that we heretofore advised you that our Board adopted certain resolutions, the purport of which we communicated to you.

We understood that your company had taken action in regard to the matter authorizing the sale and delivery of the stock in accordance with the same terms as those cover-

ed by our transaction and we of course cannot understand why there has been a delay in the completion of the delivery of the stock to us.

We again call your attention to the fact that the taxicab situation in Chicago is now being thoroughly investigated by the new Public Vehicle License Commission and practically at every meeting of the Commission the question of domination of the action of our company by the Parmelee Transportation Company is mentioned by some person. In fact, at one of the recent meetings a complete chart was introduced as evidenced by the representatives of the so-called Stickers Club, an organization of striking Checker Taxi Company drivers showing what purported to be the interlocking hook-up between the various companies and particularly the Parmelee Transportation Company with the Yellow Cab Company.

Of course we all realize that there is no such control over the action of Yellow Cab Company but these men constitute the opposition together with the newspaper backing which they have received which makes it easy for them to stick to the wildest sort of statements not necessarily backed up by facts and all of this goes into the record as real evidence. You will, of course, appreciate therefore the necessity, once and for all, of putting a stop to this type of propaganda which would result if we could go before this Commission and state once and for all that Parmelee Transportation Company is no longer a stock holder of Chicago Yellow Cab Company, Inc.

Will you therefore give this matter your immediate consideration so that the transaction as outlined in the minutes of the respective Boards may be completed without any further delay.

So that you may be fully advised as to the action taken by our Board, I am enclosing herewith a carbon copy of the entire proceedings with reference to the stock transaction.

Gov't. Ex. 170. (December 21, 1933, Minutes of meeting of Executive Committee of CCM.)

There were present at the meeting: W. B. Beal, Morris Markin, L. B. Manning

being all of the members of the Executive Committee; also S. S. Pruitt, Secretary of the corporation. Mr. Beal acted as chairman and Mr. Pruitt as Secretary of the meeting.

2097 Mr. Markin explained that he had negotiated with the Chicago Yellow Cab Company, Inc. to repurchase 25,000 shares of capital stock of said Chicago Yellow Cab

Company, Inc. upon which the Parmelee Transportation Company had an option; that in order to exercise said option which would seem advantageous to Parmelee Transportation Company it would be necessary for this corporation to advance to the Parmelee Transportation Company $197,500; that resolution should be adopted at this time authorizing such advance.

Thereupon the following resolution was offered, seconded and unanimously carried:

BE IT RESOLVED that this corporation loan to the Parmelee Transportation Company the sum of $197,500, such loan to be evidenced by a one year promissory note bearing interest at the rate of six percent (6%) per annum and said money so loaned to be used by the Parmelee Transportation Company to repurchase 25,000 shares of the capital stock of Chicago Yellow Cab Company, Inc. for the aggregate price of $197,500; and

Gov't. Ex. 171. (December 28, 1933, letter from Rank, Treasurer of Parmelee to CCM.)

Referring to the loan of $197,500 proposed to be made by you to us, you are hereby directed to pay said sum for our account to Yellow Cab Company, Chicago, Illinois.

On the understanding that such payment has been or is about to be mad , simultaneously with the execution and delivery of this letter, we enclose herewith our promissory note to evidence said loan in the face amount of $197,500.

Gov't. Ex. 172. (December 21, 1933, Minutes of Directors' Meeting of Yellow.)

Mr. Samuels called the attention of the Board to certain resolutions adopted by the Board April 6, 1933, June 22, 1933, and August 3, 1933, in reference to the purchase by this corporation of certain shares of stock of Chicago Yellow Cab Company, Inc. He stated that this corporation had not been able to consummate the purchase of the 10,000 shares at the price of $7.00 per share and an additional 40,000 shares at the price of $12.00 per share as authorized by resolution of August 3, 1933, and that now the market value of said stock is around 11¼. He further stated that there had been a long series of negotiations between the officers of Yellow Cab Company and the seller of the 25,000 shares of Chicago Yellow Cab stock purchased by this corporation in April. He stated that said Seller was of the opinion it had an option to repur-

2098 chase said stock before December 31, 1933, and this corporation was of the opinion that no such option existed. He further stated that a number of legal questions concerning the rights of the parties had further complicated the matter, and that the officers of this company had finally arrived at satisfactory terms with said Seller under which this company would resell to said Seller the 25,000 shares of Chicago Yellow Cab stock which it purchased in April of this year, and there would result to this company a profit of $41,250.00, or at the rate of 35% per annum on the investment of this company's funds.

Mr. Bieze stated that the profit was figured in the following manner:

Three quarterly dividends at 25 cents each (June 1, September 1, and December 1, 1933) on 25,000 shares	$18,750.00
Profit of 50 cents per share on sale price of 25,000 shares	12,500.00
Two quarterly dividends at 25 cents each (September 1 and December 1, 1933) on 10,000 shares authorized to be purchased by resolution of June 22, but never actually purchased by this corporation	5,000.00
Profit of 50 cents per share on sale price of 10,000 shares never actually purchased by this corporation	5,000.00
Total	$41,250.00

Upon motion duly made, seconded and unanimously carried, the following preambles and resolutions were adopted:

• • •

WHEREAS, the proposed sale to this Corporation of said additional block of 10,000 shares and said further additional block of 40,000 shares has been neither consummated or rescinded;

NOW, THEREFORE, BE IT RESOLVED, that the above described resolutions heretofore adopted by this Corporation on June 22, 1933 and August 3, 1933, be and the same are hereby in all respects rescinded, revoked, cancelled and terminated; and

BE IT FURTHER RESOLVED, that the officers of this Corporation are hereby authorized and directed to sell on or before December 31, 1933 to the Seller said 25,000 shares of the capital stock of Chicago Yellow Cab Company, Inc., at a price of One Hundred Ninety-seven Thousand Five Hundred Dollars ($197,500.00), which price is arrived at by adding to the aforesaid option price of $7.50 a share an amount equal to 50¢ per share on the 10,000 additional shares authorized to be purchased pursuant to the aforesaid resolution adopted on June 22, 1933, and

an additional amount equal to all dividends which
2099 would have been receivable by this Corporation had such additional 10,000 shares been purchased pursuant to said authorization ~~at that~~ time;

• • •

The chairman thereupon stated that the General Counsel for this corporation were of the opinion that the salaries paid to the employees of this company acting in managerial capacities should be authorized by the Board of Directors for the ensuing year in order to obviate any difficulty which the company might have in deducting such salaries on its income tax report, and for other legal reasons.

• • •

Upon motion duly made, seconded and carried, it was

RESOLVED that Thomas B. Hogan be and he is hereby employed as General Manager of the company for the calendar year 1934 at a salary of $24,000.00 per annum, payable in equal monthly installments on the 25th day of each month.

FURTHER RESOLVED that no additional compensation be paid Thomas B. Hogan for acting as President of this corporation for the ensuing year.

• • •

Upon motion duly made, seconded and carried, it was

RESOLVED that Benjamin Samuels be and he is hereby employed as Manager of the Legal and Claims Department of the company for the calendar year 1934 at a salary of $24,000.00 per annum, payable in equal monthly installments on the 25th day of each month.

FURTHER RESOLVED that no additional compensation be paid Benjamin Samuels for acting as Vice President of this corporation for the ensuing year.

• • •

Upon motion duly made, seconded and carried, it was

RESOLVED that Ralph E. Stouffer be and he is hereby employed as Maintenance Superintendent of the company for the calendar year 1934 at a salary of $12,000.00 per annum, payable in equal monthly installments on the 25th day of each month.

FURTHER RESOLVED that no additional compensation be paid Ralph E. Stouffer for acting as Vice President of this corporation for the ensuing year.

• • •

Upon motion duly made, seconded and carried, it was

RESOLVED that Rudolph H. Bieze be and he is hereby employed as Comptroller of the company for the calendar year 1934 at a salary of $10,000.00 per annum, payable in equal monthly installments on the 25th day of each month.

FURTHER RESOLVED that no additional compensation be paid Rudolph H. Bieze for acting as Secretary and Treasurer of this corporation for the ensuing year.

2100 *Gov't. Ex. 173, (December 21, 1933, letter agreement between Parmelee and Yellow.)*

We agree to take up and pay for 25,000 shares of stock of Chicago Yellow Cab Company, Inc., referred to in said resolutions, at the aggregate price of $197,500.00, on or before the 31st day of December, 1933, and will deliver to you, against delivery of certificates representing said stock duly transferred to us with all transfer taxes paid, a check to your order in that amount. It is understood between us that upon such delivery we hereby release and forever discharge you, and you hereby release and forever discharge us, of and from all liability and obligations which have or may have accrued by reason of the purchase by you of said shares of stock on or about April 6, 1933, and/or by reason of the alleged option referred to in said resolutions and/or by reason of any obligations you may have by reason of the authorizations granted by your Board of Directors on June 22, 1933 and/or on August 3, 1933, as described in the attached resolutions.

Gov't. Ex. 174. (December 27, 1934, Minutes of Directors' Meeting of Parmelee.)

Present: Levin Rank, R. J. Wyatt, Paul L. Houston being a majority of the Board of Directors and a quorum.

Mr. Rank, President of the Corporation, called the meeting to order and presided thereat. Mr. Wyatt, Secretary of the Corporation, acted as Secretary of the meeting and kept the minutes thereof.

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The Chairman then reported that after consultation with certain of the directors of the Corporation he had exercised the option for the repurchase of certain shares of Chicago Yellow Cab Company, Inc. stock granted to this Corporation upon the sale of such stock in March, 1934, and had paid, in the exercise of such option, the sum of $12 per share.

Upon motion duly made and seconded, the following resolution was unanimously adopted:

RESOLVED that all action of the President of this Corporation in exercising the option to repurchase at $12 per share the stock of Chicago Yellow Cab Company, Inc., sold by this Corporation in March, 1934, be and the same hereby is ratified, confirmed, approved and adopted as and for the action of this Corporation, . . .

2101 *Gov't Ex. 175. (October 11, 1934, letter from Frank D. Fulton to Thomas Hogan.)*

The resolution adopted with reference to the committee of three considering changes and the like does not seem to be comprehensive. The real object, I understand, was to consider suggestions made by Mr. Marble with reference to reducing the number of cabs on the street in view of the probable decline in revenue and to consider certain suggestions of his as to how this should be brought about.

I have very little interest from an owning standpoint in any of the companies and I believe am in a position to analyze the situation clearly and fairly.

I believe that the committee should go into the matter very exhaustively for the purpose of ironing out a great many unhealthy conditions, some of which were inherited and some of which have been brought about recently. I do not believe that the committee can sit down and in a few minutes comprehend and understand all of the ramifications which have been created in the building up of the taxi cab situation in Chicago.

One of the first things I believe the committee should have before it is the capital and structural set-up. This should cover all subsidiaries, as well as the holding company. I take it that while we were authorized to do this work by Yellow Cab Company that it involves upon us the duty of considering the set-up of all of the companies.

In giving the capital set-up, it would also be well to indicate, so far as possible, the stock holdings.

I take it that as directors it is our duty to work for the interest of Yellow Cab Company and its affiliated companies. We are in the somewhat peculiar position of being theoretically controlled by a management company, which is controlled by the person who assumes to be in control of our major rival company. I understand it was a loan from our company which permitted the purchase of stock of this rival company and the present situation seems to be

that with our own money we have put into the field or have financed a company which is gradually undermining us. This undermining is being done because we are not permitted, or, at least, do not attack, the situation vigorously with the idea of maintaining our supremacy in the taxi cab field. I feel quite confident that if the officers of Chicago Yellow Cab and Yellow Cab were left to their own initiative that they could take care of the Chicago situation in such an adequate way that there would be little left of our rivals.

2102 It seems to me that we should come to some conclusion with reference to policies and then pursue these policies with the idea of building up the Yellow Cab Company instead of standing acquiescent and let ourselves be shot at from all sides without retaliation. It seems to me that with approximately $2,000,000 in the bank and with the good reputation which has been built up by the present officers of the company, that we ought to dominate the field and that we ought not to be asked to take a subordinate position.

I shall be glad to go over this matter with you at any time and, of course, will be glad to meet with the committee whenever a meeting is called. However, without reference to the calling of a meeting, I shall endeavor to acquaint myself with the facts to be able to give same intelligent advice whenever the meeting may be called.

Gov't. Ex. 176. (December 17, 1934, letter from Frank D. Fulton to Board of Directors of Yellow.)

I have recently been in a number of cities and made some investigation in each of the taxicab situation.

I find that the smaller cars are generally in use and I think are more satisfactory than the heavy and cumbersome cars which are being used in Chicago and New York.

I think the officers of this Company should immediately ascertain what they can purchase a substantial unit of modern, reasonably sized cars for and such cars should be purchased within the near future to replace our obsolete cars on the street.

I think the directors should adopt a policy of replacement and that this policy should be formulated and carried out without an idea of competition but with the idea of doing the "horse sense" thing that good business judgment demands should be done.

Gov't. Ex. 177. (December 26, 1934, letter to Frank Sawyer.)

Your letter received and contents carefully noted and appreciated very much. It was the kind of letter I expected to receive. I heard from very reliable sources that there wasn't a change in the world to use the meters in New York City. Did not figure out how we could get by but he insisted on us trying it out.

Well, we have done a considerable business so far this month. We have sixty thousand ahead of last December for twenty-five days and we are $103,000 ahead of November for twenty-five days. The first part of November, after the Fair closed, it was just terrible. Looks like we ought to make $60,000 or better this month. We are still paying our dividends and we will have over the two million dollar mark in cash and do not owe anything except our current indebtedness.

2103 We have been buying our stock in the open market and have taken off the market approximately 150,000 shares. The public doesn't seem to want it, even though we are paying dividends. We are running 2166 cars and the first of the year, they will only stand us about $600,000. We have 1165 cars that will only stand us $109 a car on the books. We will have to buy some new equipment in 1935 and would like to get your idea on equipment.

As you know, M merged the two outfits in Cleveland. The Chevrolets are outbooking the Checkers about $3 per car per day. They have a little over 200 cars in each outfit. They double shift all their cars and book on the average of $13 to $14 a car per day,—they have reduced the number of cars in the town substantially. We are working approximately everything single shift except on Saturdays and days prior to holidays. For instance, we worked 2460 men Monday night and took in $26,200 in receipts.

Our rates are 15¢ for the first third and 10¢ for every two-thirds thereafter, 5¢ for extra passengers and $2.00 an hour waiting time. We are going to hit about 14¼ per mile this month.

The San Francisco and Los Angeles fellows were in a couple of weeks ago and bought a couple hundred DeSotas. They got a lot of extras with the car,—partition, etc., and bought them for $900, delivered to Frisco and Los Angeles, that would mean $785 Chicago. These fellows out west are considered pretty smart operators. At least they always gave me that impression when I was in California a couple of years ago. We just cannot pay as much as we

have been paying for cabs and if we are going to be the first class cab company, will have to come out with the stylish modern looking car. This thing of running cars four and five years is a tough job.

I took a handful of meter sheets the other day and had them checked and out of 185 trips, there was only one trip that had five passengers. The best we can average is 1.4 passengers per trip and we think the extra passenger charge is losing us some business. Now if we could get a car at the right price, we could cut the depreciation so that we could knock off the extra passenger, as the gross on extras doesn't worry us, and judging from our examination of records of the number of passengers, don't see where it pays to keep such a big car when there are so few five passenger trips.

My folks are all in Miami for the winter. I expect to go down the latter part of January. Why don't you try to get away for a couple of weeks. Give my regards to Bill, your sisters and all the gang. Keep these operating figures confidential which I know you always do.

2104 *Gov't. Ex. 178. (January 15, 1935, letter from Markin to Samuels.)*

In confirmation of our telephone conversation of today I understand that you are going to have elected to the Board of Directors of Yellow Cab Company (the operating company) Mr. Charles J. Condon and Mr. Levin Rank to succeed Mr. Frank Fulton and Mr. Paul Keller. This will substitute representatives of Parmelee Transportation Company stock interest which, as you know, is in excess of 73,000 shares for two individuals who have no stock interest in the company. It will also place on the Board of the operating company individuals closely associated with the management, which I know you will agree with me will be desirable.

I feel confident that Mr. Keller and Mr. Fulton, not being active operators and not having any stock interest, will understand this change, particularly in view of the fact that they have already stated that they have no interest in the actual management of the company and have no stock holdings.

Gov't. Ex. 179. (January 15, 1935, letter from Samuels to Charles Fuller.)

I was called on long distance telephone today by Morris Markin and he advised me that he wished me to see to it that the directorate of Yellow Cab Co. be changed eliminat-

ing Mr. White, Mr. Fulton and Mr. Keller and substituting therefor Mr. Rank, Mr. Wyatt and Mr. Houston of Pittsburgh. I told him over the telephone that I considered this extremely unwise and very bad policy and that from the standpoint of the resident directors in Chicago who would have to stand the brunt of answering questions as to why this change, a very radical one, was being made, we, the local directors would have absolutely no valid excuse or reason therefor. I for one fail to see what possible excuse I could give to any inquiring stockholder for such a change in directors, particularly in view of the fact that the three men whom we now have at least have some standing in this community and are connected with fairly large interests, whereas it would be very difficult to explain why a company operating in Chicago should have three of its directors, who live in New York and Pittsburgh.

I feel that this is absolutely ill advised and purely the result of the personal feelings of Morris and further, believe that he is not giving the matter the proper serious consideration which the subject is entitled to. While it is true that Parmelee, with its 75,000 shares of stock, should be listened to with reference to the directorate of Yellow Cab, still, juggling the Board is something which requires business judgment instead of mere personal feeling. Furthermore, I have no knowledge as to whether Morris Markin in issuing those instructions to me has consulted
2105 the Board of Parmelee and I am led to believe that this was not done because I asked him distinctly whether he had taken it up with your firm and I was led to believe that he had not done so and that he felt that he was in position to issue the direction himself.

I have discussed with you very often the proposition that we are at all times most anxious to co-operate with him but this proposition is so unbusinesslike and ill advised, particularly at this time, that I would like an expression from you and feel that before anything is done we should give it calm, deliberate consideration and, furthermore, we should be sure of any step that is taken or may be taken has been fully and fairly considered by the Parmelee Board.

Since dictating the above portion of this letter, I just was called upon the 'phone by Morris and again he tells me that he wishes to substitute Mr. Condon's name for Mr. Wyatt and Mr. Rank's name for Mr. Fulton. I cannot understand what possible excuse we as directors can have for these sudden shifts in members of our Board, so sudden in fact that from one hour to the next even Mr. Markin manages

to change his ideas. After all, the responsibility for making changes rests with the members of the Board here and unless some valid excuse or suitable reasons can be found for such a substantial shakeup in the Board, I do not see how any one can possibly justify it and I for one refuse to assume this responsibility and carry the load.

Your prompt advice in the matter will be very much appreciated.

Gov't. Ex. 180. (January 17, 1935, telegram from Fuller to Samuels.)

Your letter of the fifteenth received proposed election of Rank and Condon in place of Fulton and Keller discussed with Rank and other directors of Parmelee Stop As White remains as director of both companies and Fulton and Keller remain as directors of Chicago Yellow I personally do not see wherein explanations of Parmelee stock interest Stop Suggest meeting be adjourned until matter settled Stop Regards am writing

Gov't. Ex. 181. (January 17, 1935, letter from Fuller to Samuels.)

I enclose confirmation of my wire to you today, and I trust that the whole matter will have long since been settled by the time you read this letter.

I regret exceedingly that you feel that the desire of Markin to substitute Condon and Rank for Fulton and Keller is based on personal considerations. I feel confident that such is not the case. The desire here in New York is to simply have the Parmelee stockholdings repre-
2106 sented on the operating company Board, and Rank being constantly in Chicago, and Condon being permanently located there, seem to the directors of Parmelee to be the appropriate people. The reason that Markin changed from Houston and Wyatt to Condon alone was due to my statement to him that Condon, being an officer of Parmelee and being in Chicago, should be substituted in place of Houston, who would never attend meetings, and that Parmelee was not entitled to any more than two directors in view of its stockholdings. Markin acquiesced in this suggestion of mine and telephoned you accordingly, and I assume that his telephone call is the one you refer to in the last part of your letter.

Of course I am not alive to the personal cross currents of the directorate in Chicago, but I personally do not see

where there would be any embarrassment in explaining the situation to Keller and Fulton: namely, that they are not operating men and not stockholders, and the Parmelee stock is entitled to representation on the operating company Board. It should also be pointed out to Keller and Fulton that there is no personal element in the whole thing, which is evidenced by the fact that Keller and Fulton are still on the Chicago Yellow Board, which is the public company.

I talked to Rank on the telephone this morning and told him, as I suggested in my wire, that the meeting be adjourned so that this point can be cleared with Keller and Fulon, and I trust he has already done so.

I want to assure you that to my own knowledge Markin never had any idea of making any changes in the Board of Directors of Yellow Cab Company until the directors of Parmelee had canvassed the matter and had taken it up with him because of his personal contacts with you. I, therefore, regret that the method in which he took it up with you made you feel that there was some personal animosity in the request, as I do not feel that was the case.

Naturally if Fulton and Keller resent the request to withdraw from this operating subsidiary Board, my only suggestion is that some other arrangement be made, either by increasing the Board, or otherwise so that Parmelee will have representation.

I frankly think that we are all giving the matter of responsibility somewhat more importance than it deserves, particularly in view of the fact that Parmelee's desire is simply one of representation, which can be accomplished in a variety of ways.

I therefore, feel that if Fulton and/or Keller will not withdraw in such a way as to relieve you of any responsibility, then I suggest the Board be increased, or failing that, some other arrangement be made so Rank and Condon can be made available as directors.

As I said before, I hope that by this time everything is peaceful and that you are completely satisfied that
2107 nobody's toes have been stepped upon, as it would be of great regret to me to see a trivial matter result in any personal unpleasantness between you and your associates.

With kindest regards, and I trust that your health is much improved.

Gov't. Ex. 182. (January 20, 1935, letter from Samuels to Fuller.)

Answering your letter of January 17th and telegram, I wish to make it clear that a letter which I received from Morris the afternoon before the Board meeting was addressed to me officially as Vice-President of the Yellow Cab Co. and placed me in a very embarrassing position. In the first place, the letter stated that he had assumed that I agreed with him in reference to his proposed suggestions about changing members of the Board and then to make matters still worse, imposed upon me the obligation of asking Mr. Fulton and Mr. Keller to resign. Naturally, I was in a spot where I had to bring this matter to the attention of the full Board and Mr. Rank, who was present, will have undoubtedly by this time explained to you the entire situation. I wish to say that I never had a more unpleasant responsibility pushed on to me in my life and I hope never to have another one. In fact, if I was in good health prior to that meeting, since then I have suffered considerably and that is the thing which burns me up.

You will recall the discussion that I had in your office on Monday, January 7th, in reference to the proposition of removal of any directors. That must be fresh in your mind and at that time you expressed no such ideas as are mentioned in your recent letter. You, of course, certainly must be aware of the fact that the suggestion was the removal of Mr. White, Mr. Fulton and Mr. Keller, not because they did not represent the interests of Parmelee but because they had no stock interest in Chicago Yellow Cab which of course to my mind was a very poor reason, because at the time they were placed upon the Board of Parmelee, none of them had any stock interest. Since that time, Mr. White has become the owner of 1000 shares of Yellow.

Please bear in mind that these three men were placed upon this Board by Parmelee and that I and every other member of this Board was placed hereby Parmelee. It, therefore, seems a direct slap in the face at me, as well as every other member of the Board, that Parmelee at this late date suddenly and without any reason or basis decides that three members of the Board are unfit to act as directors and watch the interests of Parmelee and three others are required for that purpose. It seems that this is an accusation that I and the other members of the Board have acted in a fashion which would be directly antagonis-

tic to the interests of Parmelee and this I insist has
2108 never been the case and as I listened to Mr. Rank the other day in the Board Meeting, I specifically asked him whether the Board had at any time acted contrary to the wishes, desires or interests of Parmelee and he admitted that it never had, with the exception of entering into the Firestone contract and in this case I called his attention to the fact that the Firestone contract had been entered into only after considerable correspondence and discussion, both with him as President of Parmelee and with Morris. If that has been the history of the members of this Board and there is no excuse for criticising the action of these men on the Board, then the only way that I could explain their attempted removal was for personal reasons. Being President of the holding company, I would be the one who would be asked what were the reasons for this sudden change in so many members of the Board and I have yet failed to see or hear of one single substantial, reasonable excuse that I could give as President to any inquiring stockholder and I am sorry to say that your letter fails to give me any other reasonable excuse.

You have always taken a very fair and reasonable attitude in connection with the conduct of the affairs of the companies here and you and I have thoroughly agreed that in every case the directors here must act solely and exclusively for the benefit of stockholders of Chicago Yellow and its various subsidiaries, and there cannot be any division of loyalty on that particular point. Of course, as directors we must respect the interests of Parmelee because it owns over 73,000 shares of this stock and we, in looking after the interests of all stockholders of the company, must look after the interests of Parmelee as a large stockholder and you know, as well as I do, that there has never been anything done by the Chicago Board which has ever failed to take into serious consideration the welfare of Parmelee, as well as all its other stockholders, keeping in mind that the interests of Chicago Yellow and its subsidiaries must at all times be the primary consideration, as it has been. Do I need further proof of the reasonableness and the loyalty of our action when I tell you that I defy any one to show us where we have acted contrary to the interests of Parmelee as a stockholder, and the fact remains that at no time to my knowledge has there been a division of opinion on the part of these Boards as to what should or should not be done in any given situation.

If, as you say, Parmelee desires representation on the operating Board that, to my mind, is tantamount to saying that the Parmelee Co. is not satisfied with the action of the operating Board; I mean satisfied as a large stockholder of Chicago Yellow. If that is true, then it seems to me that Parmelee, through its Board or through you as its legal representative, should have apprized us in some way
2109 of what had been done by the operating Board contrary to the interests of Parmelee as a large stockholder and this I assume cannot be done, because Mr. Rank, as your president, was asked that distinct question the other day and assured us that no criticism can be made of the operating company, except in the one respect, as to the Firestone contract . . .

Now in fairness, don't you feel that before any director is asked to resign, who has served faithfully and at considerable sacrifice without financial compensation, outside of a mere director's fee, and was placed on the Board at the request of Parmelee, that it comes with poor grace to ask a man to step out without giving that man any reason for the request? I wish to say that if, under the same circumstances, I had been in the place of Mr. Fulton and Mr. Keller, I would have deemed that almost an insult.

Also, please bear in mind that this statement that Parmelee suddenly desired more representation on the operating Board seems to me rather beside the question, because you realize, of course, that aside from the fact that all of these men were placed on the Board of Parmelee, the meetings of the operating company Board are always held openly and Mr. Rank and Mr. Nelson, who was placed on the Chicago Yellow Board at the last annual meeting, always sat in at the operating Board meeting and no action has ever been taken by the operating Board meeting without the fullest and frankest discussion in their presence and in which discussion they have participated fully and freely. As I said before, no action has ever been taken unless it met with uniform approval.

With reference to your statement that Mr. Fulton and Mr. Keller are not operating men, I cannot agree with that as being a reasonable excuse, because it might have been an excuse when they were placed upon the Board by Parmelee but they have had three solid years of valuable experience in this field now and to my mind it is far more reasonable to have men sit on the Board from the outside field, to give us an outside slant, and an outside checkup,

than to have the Board composed entirely of men so close to the operation so that they oft times miss some of the very important features of their own mistakes.

In fact, may I call your attention to the situation which came up here last fall when Morris suggested to us that in considering many of the practical problems of the Yellow Cab Co. business in Chicago, and the question arose as to the appointment of a committee to study this situation, he, Morris, representing Parmelee, suggested that it would be unwise to have that committee composed of the men in the operation of Yellow Cab; and, at his own suggestion, the committee named was to be composed of those
2110 members of the Board who were not connected directly with the operation. Consequently, you will see that the suggestion about not being operating men does not seem to fit in with the theory held last fall.

In conclusion, I am at a loss to understand the statement in your letter that Mr. Markin never had any idea of changes in the Board until the directors of Parmelee had canvassed this matter and taken it up with him. Mr. Rank stated that this had been taken up at the meeting of the Parmelee Board in New York in December, yet when I spoke to you in January you seemed thoroughly surprised that any such thing should even be considered.

I almost forgot to call your attention to the legal situation involved. The annual meeting of stockholders of Yellow Cab Co., being a Maine corporation, was set of course due to the by-laws of that company and had to take place in Portland, Maine last Wednesday. In order that the owners of the capital stock of Yellow Cab Co. might hold such meeting, it was necessary to have those owners represented at Portland, Maine, and this of course had to be done by proxy. Since Chicago Yellow Cab Co. was the owner of all of its capital stock, it was compelled to take action at the December meeting of the Board to adopt the usual resolution authorizing certain officers to execute the necessary proxy designating to whom the proxy should run. This, of course, had to be attended to in due time so that the proxies at Portland could act, this being handled through the corporation trust company. The first I heard of any proposed change was the telephone conversation with Morris or the day before this meeting and a subsequent telephone conversation in the afternoon when he said that he had conferred with you. I, of course, as an individual could not have interfered with the orderly process of that meet-

ing in Portland under the circumstances and I am sure that you will agree with me that if I had attempted to do so, I would have been exceeding my authority, and would have created a situation which would have caused unnecessary complications. I give you this explanation because, as a lawyer, you will understand that situation thoroughly.

If, in the future, it becomes advisable to ask any one connected with this Board to step out, then it seems to me that the men asked as a special favor to act upon the Board by Parmelee or its representatives should do the fair thing and go to these men as individuals and explain to them the full and complete reasons for asking their resignations and why Parmelee feels a substitution is desirable. Now that you know all of the facts, don't you believe that it was unfair and decidedly unbusinesslike to put me in a spot where I should be requested to ask these men for their resignations and without being able to give them or any one else a single substantial, valid excuse for making such a request?

2111 I am writing this communication to you in all confidence, because I want you to know that I personally respect your opinions most highly and that in this situation, as in all others, I am primarily first and foremost attempting to do what I believe is for the best interests of the stockholders of Chicago Yellow Cab Co. and that means all of them, including Parmelee. If at any time I find, in my judgment, the interest of Parmelee clash with those of the other stockholders of Chicago Yellow Cab Co., which has not been so up to the present time, naturally I must act as my judgment will indicate is best for all stockholders. This, I know, you realize is my sworn duty.

Gov't. Ex. 183. (January 23, 1933, letter from Fuller to Samuels.)

I am very much obliged to you for your letter of January 20. I appreciate to the full your personal position in the situation. I do not have to say that I regret exceedingly the method in which Markin and Rank handled their request for directors' substitutes, and I think that the best thing to do at the present time is to forget about it, as our greatest desire here in New York is to be sure that the friendly relations with you personally, that have existed in the past, will continue in the future. I appreciate the fact that it has been very upsetting, but I, for one, understand your position thoroughly.

* * *

In this connection, so my files can be complete, I would appreciate it if you would send me a list of the officers and directors as now in office of Yellow Cab Company. As you know, I keep a running list of these persons in my files here.

Gov't. Ex. 184. (May 14, 1935, telegram from Markin to Corporation Trust Company.)

Corporation Trust Company Room 332 120 Broadway Benjamin Samuels President Yellow Cab Co. NYK Protest as stockholder of Waverly your voting stock to reflect your nominees to the Yellow Cab Board and will hold you personally responsible for any damage to Waverly or its stockholders.

Gov't. Ex. 185. (March 27, 1935, letter from Chicago Yellow to Markin.)

There are a number of matters which you have indicated that you desire to have us, the managing officers of Chicago Yellow Cab Company, Inc., its subsidiaries and The Waverly Corporation, submit with our approval to the respective Boards at their next meetings, some of which have been covered by written proposals and some of which you have discussed orally with us. The proposals in question are as follows:

* * *

2112 B. Removal of Directors

1. *Your Proposal.* In January, 1935, you wrote a letter to Mr. Samuels as Vice-President of Yellow Cab Company, requesting that he cause the removal of Mr. Frank Fulton and Mr. Paul Keller as directors of Yellow Cab Company, and to substitute Mr. Charles J. Condon and Mr. Levin Rank in their places. This letter was disposed of at the January, 1935 meeting of the Board of Yellow Cab Company.

Since that time you have verbally requested the officers to cause the removal of Messrs. Fulton and Keller from the Board of Chicago Yellow Cab Company, Inc. and substitution of two officers of Parmelee Transportation Company, Messrs. Chas. J. Condon of Chicago and Paul Houston of Pittsburgh, and that such change be effected before the annaul meeting of stockholders of the holding corporation to be held in May of this year.

2. *Reply.* The officers have been presented with no further reason which would alter or change the position taken

by the Board at its January meeting in respect to the removal of these gentlemen from the Board of Directors of Yellow Cab Company, and can see no justification for again bringing this matter before the Board in connection with Chicago Yellow Cab Company, Inc. in view of the fact that the Boards of Yellow and Chicago Yellow to all intents and purposes function as one body and in a harmonious manner.

3. *Suggestion.* While it is our intention to cooperate with Parmelee, we are of course representing all of the remaining stockholders of the Holding Corporation as well. If you can show just cause for removing Messrs. Fulton and Keller, the officers will recommend to the Board the substitution of the holders of other substantial blocks of stock of the holding corporation, or will entertain the thought of substituting two bankers chosen from Chicago's Loop banks.

We think it is of importance for you to know that the officers have received requests from other holders of large blocks of the holding corporation's stock, that they be placed on the respective Boards of Yellow and Chicago Yellow. However, we desire to comply with your wishes as the representative of one of our largest stockholders, insofar as it is possible.

C. Purchases of New Equipment

1. *Verbal Proposal.* No written proposals have been submitted in regard to this matter. In verbal conversation you propose to cause Checker Manufacturing Corporation to manufacture and deliver to Yellow Cab Company 1000 new purpose-built cabs, at the price of $1350. each, and after some further discussion you verbally guaranteed a $15,000. trade-in over and above the underpreciated value, on the 1000 old cabs to be taken out of service. In this connection you have submitted samples of upholstery
2113 and have discussed with Mr. Stouffer, our Maintenance Superintendent, the various parts to be used in the production of these new cabs. It is our understanding that Checker Cab Manufacturing Company has on hand a large inventory of unused parts, to be used in the production of this new cab. We are also informed that Checker Cab Manufacturing Company has not manufactured any cabs for approximately one year.

2. *Terms of Purchase.* We desire to make the following comments: The cabs which have been furnished by Checker Cab Manufacturing Company since 1929 have, as a whole,

been satisfactory. Our experience with this corporation has been good. However, in view of the fact that Checker Cab Manufacturing Corporation has not made any cabs during the past year, we are unable to judge the merits of the product which it now proposes to furnish to Yellow Cab Company. We are of the opinion that in spending approximately $1,350,000. of the stockholders' money, we should be furnished with six cabs of the type which you propose to sell this corporation, and be permitted to use these cabs for a sufficient length of time to enable us to find any defects which may develop. We will assure you that if, after testing the six samples submitted by you, and after the correction by Checker of any defects which may appear at no additional cost to us, the officers of Yellow Cab Company will recommend to the Board that an order be placed with you for 1000 cabs, provided that these cabs are still the most satisfactory of those submitted to the company.

3. *Replacement Parts.* An ordinary business man, in placing an order of this size, would of course expect some consideration for replacement parts. If the parts which Checker Cab Manufacturing Company plans to use in these purpose-built cars are in any way obsolete and cannot be readily replaced, it would be short-sighted for the Board of Directors of Yellow Cab Company to place this order with Checker Cab Manufacturing Company. The officers feel that there should be a guaranty in writing signed by Checker Cab Manufacturing Company with reference to prices on replacements and with reference to the matter of prompt deliveries on replacements. This guaranty forms a part of the transaction and it will be impossible to place the order with you unless Yellow and Checker can come to some agreement in reference to replacement parts and the prices to be charged therefor.

4. *Performance Bond.* An ordinary business man, placing an order of this size and using his own funds, would undoubtedly require a performance bond. However, in view of our past satisfactory relationship with Checker Cab Manufacturing Corporation and its ability to deliver replacement parts at all times, we will recommend to the Board the waiving of such a bond. It will undoubtedly be suitable assurance of proper performance for the
2114 contract to provide for the payment of 80% or 90% of the agreed price at the time of the delivery of each installment of cabs, and upon their inspection and acceptance, the balance to be paid after several months satisfactory performance.

Gov't. Ex. 186. (March 28, 1935, Minutes of Directors' Meeting of Yellow.)

Present: Thomas B. Hogan, Benjamin Samuels, R. H. Bieze, Joseph J. White, Frank D. Fulton, Paul E. Keller, Ralph E. Stouffer

constituting the entire Board of Directors. Messrs. I. N. Nelson, Levin Rank and Morris Markin were also present at the meeting.

Mr. Thomas B. Hogan acted as chairman of the meeting and Mr. R. H. Bieze acted as secretary.

* * *

The chairman made a report of the cars submitted to this corporation by various manufacturers desiring to sell this corporation the 1000 new taxicabs which the Board had decided to purchase in the spring of this year. He stated that the first car submitted had been an Auburn, which was found to be too small and with such low doorways than an average sized man could not enter the cab without stooping into a very uncomfortable position. He stated that both the cab drivers and the management considered this car absolutely unsuitable for this company's purposes. He further stated that a Nash pleasure car had then been submitted; that it would be necessary for this company to equip a standard pleasure car so that it might be used for cab purposes, and that in the judgment of Mr. Stouffer, Maintenance Superintendent, this company should not attempt to convert a pleasure car into a taxicab, but should buy a purpose built cab. It was his thought that if the company had to convert pleasure cars into cabs, the cost would amount to far more than the price for which this company could purchase an equally good purpose-built cab.

The chairman then stated that Ford Motor Company had at first submitted a stock job which had been tested for a few days by certain of the drivers and himself, and which plainly showed that it would not stand up; he further stated that Ford had later submitted a car with special purpose-built body, but that the management felt that this purpose-built Ford was not a heavy enough car to withstand the hard usage which is given to cabs. He stated that the next car which had been submitted was a light Packard, which at first looked like an advantageous purchase for this corporation, but that upon further investigation it appeared that in order to deliver Packards for cab purposes it would

be necessary to put a larger body than Packard's light car now carries, on the Packard light chassis and to elongate the framework by ten inches.

2115 Mr. Stouffer expressed the opinion that it is the general experience of experts and has been his experience that this plan would not work out satisfactorily. The chairman thereupon stated that a purpose built Pontiac had next been submitted, and that this car was very well liked except for the fact that it had a three-inch ridge running through the center of the floor in the space which the passengers occupy, and that it is the company's experience that passengers trip over such small things as rugs, and that the company could not afford to operate this type of car; Pontiac could not remove this ridge and it was therefore determined not to purchase this car. He stated that Yellow Truck & Coach Company had indicated several weeks ago that it would submit a purpose-built car containing different parts from various General Motor Products, but that although delivery of these cars for test purposes had been promised for several weeks, they had not yet been submitted. He stated that Buick had also submitted cars which in his judgment were not suitable.

The chairman further stated that Checker Cab Manufacturing Company had built the cars which this company is now operating, and that it had submitted an offer to sell this company 1000 purpose-built cabs at the price of $1350.00 each plus any state and Federal excise and sales tax.

Mr. Stouffer stated that he had approved the specifications and that the company's experience with the cabs heretofore manufactured by Checker Cab Manufacturing Company is good. He further stated that Checker Cab Manufacturing Company will be able to furnish replacement parts at all times during the life of the cab, which is a very important item to be considered by the Board when authorizing the purchase of these new cabs.

A general discussion was had by those present.

Upon motion duly made, seconded and carried, it was

RESOLVED that the President or Vice President and Secretary of this corporation be and they are hereby authorized to sign and execute in the name and on behalf of this corporation and under its corporate seal a contract with Checker Cab Manufacturing Corporation, a New Jersey corporation, for the purchase of 1000 new taxicabs without tires to be built by Checker at the price

of $1350.00 each plus any state and Federal excise and/or sales tax.

FURTHER RESOLVED that this corporation make an advance payment to Checker within five days after the signing of said agreement in the amount of $135,000.00.

Gov't. Ex. 187. (May 14, 1935, letter from Samuels, Hogan and Bieze to Mr. Dwight P. Green, there being attached thereto an escrow dated May 14, 1935 of Marion B.
2116 *Stahl and Charles Fuller and the resignations of each as directors of Chicago Yellow.)*

The undersigned, being managing officers of Chicago Yellow Cab Company, Inc., request you to act as depositary under the terms of a certain escrow dated May 14, 1935, signed by Marion B. Stahl and Charles Fuller of New York City, a copy of which is attached hereto, and to hold the resignations of Messrs. Stahl and Fuller and act in connection with the same in accordance with the terms of said escrow agreement.

It is understood that you are acting only as depositary and are in no way personally responsible for the failure of the Board of Directors of Chicago Yellow Cab Company, Inc. to elect a nominee or nominees of Parmelee Transportation Company and/or Mr. Benjamin Samuels to fill such vacancy or vacancies. It is further understood, however, that upon receiving the statement or statements contemplated in such escrow agreement in reference to certain directors elected May 15, 1934, not desiring to continue to be associated with Chicago Yellow Cab Company, Inc., or resignations of present directors, that you shall present the resignations of Messrs. Stahl and Fuller held by you in escrow, upon the agreement of a majority of directors that such vacancy or vacancies will be filled as set out in said escrow agreement.

The undersigned, Marion B. Stahl and Charles Fuller, hereby deposit with you in escrow their resignations as directors of Chicago Yellow Cab Company, Inc., a New York corporation. These resignations are to be disposed of as follows:

(1) If, within thirty (30) days after Mr. Markin's return to Chicago from the West, there is exhibited to you a statement signed by any one of the directors of Chicago Yellow Cab Company, Inc. who were elected at the annual meeting on May 15, 1934, to the effect that he does not desire to continue associated with Chicago Yellow Cab Com-

pany, Inc., or that he desires to resign as a director, or that he desires not to be reelected as a director, you are to deliver one of the enclosed resignations to the Board of Directors of Chicago Yellow Cab Company, Inc. so that such Board may accept the same and so that the successor of such resigned director shall be nominated by Parmelee Transportation Company and be elected. It is contemplated that within said thirty day period two of such letters from such directors elected on May 15, 1934 will be presented to you so that the two resignations enclosed herewith will be accepted and successors nominated by Parmelee Transportation Company elected.

(2) If, by the expiration of the thirty day period above referred to, no or only one such statement is submitted to you signed by a director elected on May 15, 1934, then you are instructed to transmit to the Board of Directors of Chicago Yellow Cab Company, Inc. both of the enclosed resignations or the remaining resignation still held by you, as the case may be; it being contemplated that in such event, such resignation or resignations, as the case may be, will be presented to the Board of Directors and accepted and Mr. Samuels' nominee or nominees elected.

2117

The foregoing arrangement has been made in order to permit the election of two directors nominated by Parmelee Transportation Company in lieu of two of the directors who were elected on May 15, 1934.

It is understood that you shall deliver such resignation or resignations if and when a majority of the Board of Directors of Chicago Yellow Cab Company, Inc. agree to elect a nominee or nominees, as the case may be, of Parmelee Transportation Company, and that you shall in no way be responsible if such directors do not fill the vacancy or vacancies by nominees of Parmelee Transportation Company.

I hereby tender my resignation as a Director of your corporation effective as and when accepted by your Board of Directors. This resignation is subject to the terms of certain escrow instructions bearing date of May 14, 1935 addressed to Dwight Green, Esq., of Chicago, Illinois.

I hereby tender my resignation as a director of your corporation effective as and when accepted by your Board of Directors. This resignation is subject to the terms of certain escrow instructions bearing date of May 14, 1935 addressed to Dwight Green, Esq., of Chicago, Illinois.

Gov't. Ex. 188. (May 22, 1935, letter from Samuels to Rank.)

The letters which you sent to Mr. Biezy, *in re* directorship escrow agreement, were received today but owing to Tom Hogan's absence from the city their remailing back to you will be delayed one day. Everything seems to be O. K. and the resignations and escrow arrangement were duly received and are in proper shape.

At the meeting the other day, the only action taken was the reelection of the same officers as last year and then adjournment.

2118 *Gov't. Ex. 189. (May 20, 1935, letter from Rank, President of Parmelee to Mr. Dwight P. Green.)*

I refer you to the escrow instructions signed by Mr. Stahl and Mr. Fuller and I submit to you herewith the enclosed letter from Paul Keller from which you can see he has no intention or desire to continue as a director of the Chicago Yellow Cab Company, Inc.

In view of the clear expression of his position, I suggest that, as contemplated by Mr. Stahl's and Mr. Fuller's letter, one of their resignations be submitted to the Board of Directors at its next meeting and that Mr. P. L. Houston be nominated and elected to fill the vacancy caused by such resignation.

Gov't. Ex. 190. (May 16, 1935, letter from Rank to Paul E. Keller.)

There seems to have been some slight misunderstanding between Mr. Markin and the local management of the Yellow Cab Company with respect to the election of directors of the Chicago Yellow Cab Company, Inc. for the ensuing year. It was my understanding that Mr. Markin discussed this matter with you and that you indicated your willingness not to stand for reelection as a director of the parent company, but would continue on the subsidiary company board.

There is absolutely no question of the qualifications of any of the present directors in either Mr. Markin's or my mind, but simply a very understandable desire on my part to secure representation for Parmelee in the persons of men who are now running and who are responsible for the Parmelee business.

I would greatly appreciate confirmation from you of my understanding of your willingness not to stand for reelection at the annual meeting of stockholders held Tuesday last.

Gov't. Ex. 191. (May 18, 1935, letter from Keller to Rank.)

It is quite surprising to learn from your letter that there was any misunderstanding whatever between Mr. Markin and the local management of the Yellow Cab Company with respect to my directorship on the parent company. I regret exceedingly being the object of any possible misunderstanding. I did have a discussion with Mr. Markin in my office relative to this matter and he will tell you what my position then and always has been: namely, that it is quite immaterial with me whether I remain a director of the parent company and when my retirement came, it would be, I hope, with the feeling on the part of every one that while some one else may have been of greater
2119 service to the company, nevertheless, I had served to the very best of my ability and judgment. Mr. Markin assured me that that was the case and as evidence of his apparent belief in that regard, he expressed a desire that I continue on the Board of the subsidiary company, which I told him I was willing to do.

You can be positively sure that there has been nothing whatever said or done on my part to oppose your or Mr. Markin's wishes and if there has been any persistence on the part of any one else to sponsor my continuance on the Board, it has been without my knowledge. I am sincerely sorry if there has been any embarrassment whatever. I would much prefer to be out entirely than to have any one placed in such a position.

After talking with Mr. Markin, I took it as a matter of course that on re-election I would be retired. I understand I am still on the Board of the Yellow Cab Company, on which I will be glad to remain so long as it meets with the approval of every one interested, but if not, I am perfectly willing to retire from that also.

Thanking you for your kindness in writing to me and with best regards, I am,

Gov't. Ex. 192. (June 20, 1935, Minutes of Directors' Meeting of Chicago Yellow.)

Present: Benjamin Samuels, Thomas B. Hogan, Ralph E. Stouffer, I. N. Nelson, R. H. Bieze, Levin Rank constituting a majority of the Board of Directors. Messrs. Paul E. Keller and Frank Fulton, directors of Yellow Cab Company, and Mr. Morris Markin were also present.

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The chairman thereupon stated that there had been presented to him letters from Messrs. Paul E. Keller and Frank Fulton stating that they did not desire to become directors of this corporation and that under the terms of an escrow agreement, wherein Mr. Dwight P. Green, of the firm of Kirkland, Fleming, Green & Martin, is acting as escrow agent for the resignations of Messrs. Marion B. Stahl and Charles Fuller, it is provided that such resignations be presented to this Board of Directors and that nominees of Parmelee Transportation Company be elected because of the vacancies created by such resignations. Messrs. Fulton and Keller, being present at the meeting, stated to the meeting that they did not desire to be elected directors to fill vacancies caused by the resignations of Messrs. Stahl and Fuller. Miss M. L. Middlekauff, of the above mentioned law firm, thereupon presented to the meeting the resignations of Messrs. Stahl and Fuller.

Upon motion duly made, seconded and carried, it was

2120 RESOLVED that the resignations of Mr. Marion B. Stahl and Mr. Charles Fuller, as directors of this corporation, be and the same are hereby accepted to take effect immediately.

The chairman thereupon announced that it was in order to fill two vacancies in the Board of Directors caused by the resignations of Messrs. Stahl and Fuller.

Mr. Levin Rank thereupon nominated Mr. P. L. Houston of Pittsburgh, Pennsylvania, and Mr. J. L. Kosner of Chicago, Illinois, as directors of the corporation to serve until the next annual meeting of stockholders and until their successors are elected and qualified. The nominations were seconded. A ballot having been taken and all of the directors present having voted in favor of Messrs. Houston and Kesner, they were duly elected to serve as aforesaid.

Gov't. Ex. 192. (June 25, 1935, letter from Kirkland, Fleming, Green & Martin to Frank E. Fulton, with letter attached from Fulton to Chicago Yellow Cab.)

In accordance with instructions from Mr. Samuels we have prepared the necessary letter to be signed by you in connection with the presentation of one of the resignations of directors at the last meeting of Chicago Yellow Cab Company, Inc. Before completing the minutes for this meeting under the terms of the escrow agreement, under which Mr. Green held these resignations, it will be neces-

sary for us to have this letter in our files. If you desire to prepare a letter containing substantially the matters set forth in the letter enclosed, Mr. Green will of course be happy to accept such letter.

The agreement under which Mr. Green held these resignations provides that if, on or before thirty days after Mr. Markin's return to Chicago from the West, there is exhibited to Mr. Green a statement signed by any one of the directors of Chicago Yellow Cab Company, Inc., who were elected at the annual meeting on May 15, 1934, to the effect that he does not desire to continue associated with Chicago Yellow Cab Company, Inc., or that he does not desire to be re-elected as a director, Mr. Green is to deliver one of the resignations to the Board of Directors of Chicago Yellow Cab Company, Inc., so that such board may accept the same and so that the successor of such resigned director shall be nominated by Parmelee Transportation Company and be elected.

We have in our files a letter from Mr. Keller directed to Mr. Rank which he stated, that he desired to have us use to comply with the terms of the escrow agreement.

I do not desire to continue associated with Chicago Yellow Cab Company, Inc. or to be reelected as a Director of that corporation.

2121 *Gov't. Ex. 194. (January 12, 1934, letter from Samuels to Markin, there being attached thereto a letter dated January 11, 1934, from Dwight P. Green to Yellow and a further memorandum.)*

Enclosed please find copy of an opinion which we have this day received from our General Counsel signed by Mr. Green.

I thought that you would want to known his conclusions as soon as possible.

Replying to Mr. Fuller's memorandum recommending removal of books, records and assets of the Waverly Corporation to Jersey City, N. J. and change of personnel of officers and directors:

1. Section 125 of the Business Corporation Act of Illinois provides in effect that the penalty for a foreign corporation transacting business in the State without a certificate of authority is—

(a) The corporation is deprived of maintaining any action in any court of this State until the corporation shall have obtained a certificate of authority. If, however, the corporation is sued in this State it is not

deprived of any right of defense nor is the validity of any contract or other act of the corporation impaired. (b) The corporation is liable to the State on suit by the Attorney General for all fees, franchise taxes and other charges which would have been imposed by the Act if the corporation had applied for and received a certificate of authority, plus a penalty of 10% of such amount.

The line of demarcation between what constitutes "doing business" and "not doing business" is always difficult to define. Although this corporation is not very active any court to whom the issue might be presented would no doubt give great weight to the fact that the corporation's books and records are kept in this State and such office and activities as it has are located and maintained in this State. We are of the opinion that it is not unlikely that such a court would conclude from these facts that the corporation is doing business in this State.

Accordingly you should consider how serious in your case may be the penalties above referred to, if imposed, and what steps should be taken to avoid such penalties.

Such penalties can of course be avoided by the corporation obtaining a Certificate of Authority to do
2122 business in the State of Illinois. The cost of the initial qualification would be $628.00 and the franchise tax would be $608.00 per annum, if all of the property and the business of the corporation is located in Illinois. If, however, any part of the property or business of the corporation is removed from the state, both the initial and annual franchise fee would be reduced proportionately according to the formula prescribed by the statute.

• • •

The advisability of qualifying the corporation to do business in Illinois is a question of policy which your Board of Directors should consider from all angles. In our opinion, when considering such a question your chief concern should be what disadvantage, if any, might arise in any rate or other investigation of your company from the fact that Waverly had thus submitted itself completely to the jurisdiction of Illinois.

• • •

We are advised that certain transactions involving your Company and Waverly are being investigated in

connection with the determination of the income tax of your Company. At the present time this investigation is being carried on by the field agent in Chicago who may require further access to the records of Waverly. In this connection it may be inadvisable to remove the records from this jurisdiction until the Revenue Agent's investigation is complete.

3. For other reasons referred to in Mr. Fuller's memorandum, he suggests that the present directors and officers of the corporation be replaced by nominees outside of the State of Illinois. No doubt some advantage in avoiding service of process might accrue under such a change. In considering its advisability, however, your directors must consider their responsibility with respect to the investment of your corporation in Waverly, which is so substantial that it must be preserved for the benefit of your corporation at all hazards. It seems to us that such a change in personnel would be somewhat superficial and could be easily penetrated upon inquiry of your own directors and officers, who would remain subject to process in this State. In such event all apparent advantage would not only be lost but the reaction resulting from the discovery might prove more harmful than any result which might be anticipated from the present situation. While it may be possible, as Mr. Fuller suggests, for you to delegate the responsibility of the direction and management of this corporation to others in whom you have full confidence, your responsibility for the protection of your investment in this corporation is such that we are of the opinion that such a delegation
2123 would be inadvisable and might involve serious consequences to your Board of Directors.

In conclusion, our recommendation is that if your Board of Directors decided to make any change, it should be confined to removing the records and accounts to the home office in Delaware at the proper time and entrusting their safe keeping to a responsible trust company as fiscal agent of Waverly subject to the order of its Board of Directors and proper officers.

MEMORANDUM

It is recommended that the company which now maintains a safe deposit box, bank accounts and its books and records in Chicago adopt a policy of ceasing to do any business in Illinois and to the extent, if possible, divorce its personnel from the personnel of Yellow Cab, so that its records will not disclose an interlocking situation.

Accordingly, the following steps should be taken.

1. The company qualifies as a foreign corporation to do business in the State of New Jersey and opens an office at 15 Exchange Place, Jersey City, New Jersey. The cost of this is nominal.

2. The company rents a safe deposit box and opens a bank account at a Jersey City bank. Arrangements can be made that no access to the safe deposit box can be obtained and that no funds can be withdrawn from its bank account without the counter-signature of a person designated by Yellow, although the resolution opening the box or bank account will not mention Yellow Cab.

3. The minute books, books of account and records of the company are installed in its office in Jersey City. These books can be withdrawn from this office at periods of several weeks entires, but it is considered important that the officers of the company can testify that all corporation records are kept outside of the State of Illinois.

4. The present officers and directors resign and a Board of three directors is elected. These directors are individuals who are not residents of the State of Illinois but who enjoy the confidence of the executives of Yellow Cab. These directors should be individuals who are unable to testify with respect to the politics surrounding the company and will only know who are the stockholders and what appears on the actual books and records of the company. It is suggested that there be selected such individuals from outside the State who would consent to serve.

In the past it has been possible to obtain from law firms and accountants, doing business in Jersey City, the names of individuals of unquestioned integrity, who would act as directors and officers and keep the books of the corporation as accountants besides.

2124 In lieu of qualifying in New Jersey, the same program can be followed in Wilmington, Delaware, which is the home office of the corporation. However, a Jersey City office would be a very great convenience, in view of its accessibility to New York.

5. Any transactions in the purchase of securities or otherwise that the corporation may engage in can be ordered from Chicago and executed from Jersey City. Checks, of course, can be countersigned in Chicago and then forwarded for signature. In the purchase of securities, the securities themselves can be held in safekeeping by the broker until such time as it is convenient to gain access to the safe deposit box. All the securities owned by the corporation could

be kept in a safety box in Jersey City, or any other place outside of Illinois, and in order to protect these securities, a provision could easily be made that the safety box could not be opened by the officers or directors, except in the presence of a certain individual to be designated.

The reasons motivating the foregoing recommendation are as follows:

a. Although the company is maintaining its books in Chicago, it is never qualified to do business in Illinois as a foreign corporation and it is believed that its activities would be considered "doing business" in this state. This situation should be cured not only in order to avoid the possible imposition of franchise taxes but also to eliminate any attack on any of its transactions by reason of the fact that the corporation had no authority to engage in them under the Illinois law. If the company has been purchasing securities and closing its contracts for such purchases in Chicago such an act might be construed as "doing business" in this state.

b. The removal of the corporation and its records from Chicago and the change of its personnel would eliminate the convenience of the examination of its books by public, state or tax authorities in Illinois and also any city commission or investigating body would be able to examine into its records only with great difficulty.

Gov't. Ex. 195. (December 19, 1935, letter from Dwight P. Green to Board of Directors of Chicago Yellow.)

You have requested our opinion as to the legality of the proposed sale to your managing officers of 6000 shares of Chicago Yellow Cab Company, Inc. now owned by the Waverly Corporation and the sale to others of not to exceed 27,000 such shares also owned by The Waverly Corporation.

2125 We understand that all of the outstanding capital stock of The Waverly Corporation will be owned by Chicago Yellow Cab Company, Inc. at the time when such sales will be effected or soon thereafter. Accordingly, for the purpose of this opinion, we will consider that The Waverly Corporation is a wholly owned subsidiary of Chicago Yellow Cab Company, Inc.

We further understand that The Waverly Corporation owns 131,587 shares of Chicago Yellow Cab Company, Inc., a substantial part of which was acquired from Yellow Cab Company in 1931 and the balance either in the open market

or in private sales, at an average price of approximately $9.00 per shares, are expected to be retired through the dissolution of The Waverly Corporation and the amendment of the Certificate of Incorporation of Chicago Yellow Cab Company, Inc. with the approval of the required number of its shareholders.

As to the proposed sale of 6,000 shares to your managing officers, we understand that the President of Chicago Yellow Cab Company, Inc. and the President of Yellow Cab Company, both of whom are active in the management and operations of your company and its subsidiaries, will each be afforded the privilege of buying 2,500 of such shares, and that your Comptroller and Superintendent of Maintenance will each be permitted the privilege of buying 500 of such shares; that the privilege so afforded to each such officer will constitute part of the consideration which each is to receive under a three-year employment contract to be entered into at this time.

With respect to the sale of not to exceed 27,000 shares to others, we understand that the purchaser will not be an officer or director of The Waverly Corporation or any of its affiliates and that no such officer or director will have any interest in such purchase. We understand, however, that the purchaser or his associates own a minority interest in the stock of Chicago Yellow Cab Company, Inc., and may in some direct or indirect manner be associated with corporations which directly or indirectly own a substantial, although a minority, block of stock of Chicago Yellow Cab Company, Inc. We also understand that such sale will be a private sale and no offering of the stock will be made either to the other stockholders or to the public; that by none of the transactions above mentioned will the respective purchasers, or any group with which they may be said to be associated directly or indirectly, acquire control of the Chicago Yellow Cab Company, Inc. by virtue of such transactions.

We have not been advised of the exact price to be paid by the purchasers in any of the above mentioned transactions, except that it will be approximately the market price prevailing at the time.

In reaching an opinion upon the question pre-
2126 sented, the following considerations are important:

(1) In any such sale of stock the question of pre-emptive rights of other stockholders may arise. We are of the opinion that no such pre-emptive right exists

under the laws of the State of New York with respect to treasury stock which has not been acquired for the purpose of retirement. From the information we have of the facts and circumstances under which the shares in question were acquired and have been held, we are of the opinion that no court should hold that the shares were acquired for the purpose of retirement. We are, therefore, of the opinion that an attack upon the proposed sales by dissenting stockholders should not be sustained on the sole ground of the violation of pre-emptive rights.

(2) Irrespective of any rule of pre-emptive rights, it is a breach of duty on the part of the directors to sell treasury shares, not to benefit the shareholders, but to benefit themselves or to enable particular stockholders or others to acquire voting control of the corporation, or to enable them to acquire shares at less than their value. Under such circumstances it may be prejudicial to the stockholders and a breach of the duty of the directors, as fiduciary agents, to issue or to sell such shares without first offering them to the stockholders. If any such breach of duty were involved in the contemplated sales, they could be set aside by a dissenting stockholder and the directors, as well as the purchasers, would be subject to a liability to restore the corporation to its former status. In addition, the directors might be held liable to a complaining stockholder for damages resulting from the breach of duty.

(3) Such a breach of duty on the part of the directors might result from the corporation with their approval receiving an inadequate price for the shares. While market price is generally considered a fair criterion as to value, it is not the only consideration involved. In this connection book value, earnings, both present and prospective, proposed changes in capital structure, availability of other possible purchasers and any contemplated material change in the business should be considered, as well as the prevailing market price.

Special emphasis should be placed upon the effect which any proposed reduction in outstanding shares might have upon the value of shares to be sold, both from the point of view of any adjustment in book value which may result, and from the point of view of the effect of any such reduction on market or other

2127 value. Such transactions have been sustained by the courts where the shares have been offered to the highest bidder either at auction or on sealed bids, after the stockholders and the public have been notified of the intention to sell. On the other hand, courts have set aside such transactions between the corporation and a particular stockholder or group of stockholders, where it appeared that a more favorable price could have been obtained from a more general offering or by the disclosure of confidential information, which materially affected the value and was known only to the directors and the purchasers.

(4) An important consideration is the question of whether or not the sale is necessary for the purposes of the corporation. In this connection the requirements of the corporation for the proceeds of the sale should be considered as against the benefits to be derived by it in continuing to hold the stock. This would involve consideration of the cash position of the company, its commitments made or in contemplation, its estimated earnings, and its present or future cash requirements. This question should be considered solely from the point of view of the corporation in the conduct of its business and not from the point of view of any collateral benefits to be otherwise derived by the stockholders.

(5) A further consideration is that of the advisability of convening a special meeting of the stockholders for the purpose of voting upon an amendment to the Certificate of Incorporation reducing the capital stock from 400,000 shares to 300,000 shares, by the retirement of the 100,000 which would be available for that purpose after effecting the sales which you contemplate, and for the collateral purpose of obtaining the stockholders' approval to such sales. It is assumed that the directors, in calling such a meeting, would make a complete disclosure of all the facts and circumstances involved in the proposed transactions and the reasons and purposes which make them advisable. Such a meeting would have the merit of effecting an immediate cancellation of the 100,000 shares and bringing the entire transaction into open discussion, thereby removing all accusations of secrecy and fraud and relieving the directors of the heavy responsibility which they would be under in consuming the transaction in the manner now contemplated.

From the foregoing considerations and the facts of which we have been informed, we reach the following conclusions:

(a) On the question of pre-emptive right, our conclusion is as stated above in paragraph (1).

(b) On the question of the necessity of the sale and on the question of adequacy of price, we are of the opinion that they are questions of business judg-
2128 ment for the decision of your Board of Directors after complete investigation and full consideration of the factors to which we have above referred.

(c) The nature of the proposed transactions is such as to invite the closest scrutiny on the part of any court, and therefore, to require the greatest of caution on your part to avoid any possible accusation of breach of duty. As pointed out above, such a breach of duty may result from your failure to properly determine (1) the necessity for such a sale, and (2) the adequacy of the price. Of these two questions the first seems to involve no substantial difficulty, but the second may be much more difficult and subject to wide differences of opinion under present conditions, especially in view of the uncertain effect on value which a subsequent change in capital may have and your omissions to solicit bids from your stockholders or the public. If, after full consideration of all the factors to which we have above referred, you feel uncertain as to reaching the proper conclusion upon the two questions involved, we recommend that a special meeting of stockholders be convened for the purposes hereinabove mentioned before effecting the transactions.

Gov't. Ex. 196. (August 20, 1935, letter from Markin to Yellow.)

For reasons that I have already given you verbally, I hereby offer to transfer to Yellow Cab Company all shares of Class A Stock of The Waverly Corporation owned or controlled by me in consideration of the repayment to me of the purchase price originally paid for such shares.

In view of this proposed transfer by me of these shares, I deem it advisable for the best interests of the stockholders of Yellow Cab Company that my fellow Class A Stockholders likewise transfer their shares to Yellow Cab Company upon the surrender to them of the promissory notes or other evidences of indebtedness given by them in connection with the purchase of their Class A Stockholdings in The Waverly Corporation.

I think that you will agree with me that this program is for the best interests of Yellow Cab Company and its stockholders; and I accordingly stand ready to make delivery of all my Class A Stockholdings in The Waverly Corporation against repayment of the original purchase price provided that other stockholders will simultaneously make delivery of all their Class A Stockholdings in The Waverly Corporation to Yellow Cab Company.

2129 *Gov't. Ex. 197. (December 19, 1935, Minutes of Directors Meeting of Yellow.)*

Present: Thomas B. Hogan, Benjamin Samuels, R. H. Bieze, Ralph E. Stouffer, Joseph J. White, Frank D. Fulton, Paul E. Keller constituting the entire Board of Directors, Messrs. I. N. Nelson, J. L. Kesner, Levin Rank and Paul L. Houston, members of the Board of Directors of Chicago Yellow Cab Company, Inc. Mr. Morris Markin, and Mr. Dwight P. Green and Miss M. L. Middlekauff of the firm of Kirkland, Fleming, Green & Martin, were also present.

* * *

Mr. Hogan thereupon retired from the meeting and Mr. Samuels acted as Chairman.

Mr. Samuels thereupon presented and read a proposed Employment Contract dated as of December 19, 1935, between Thomas B. Hogan and this corporation, wherein this corporation engages Mr. Hogan as its General Manager for a period of three years beginning January 1, 1936, and ending December 31, 1938, at a salary of $24,000 per annum, payable in equal monthly installments on the 25th day of each month, and which provides that this company will make available for sale to Mr. Hogan, for a period of sixty (60) days from the date of his contract, 2500 shares of the capital stock of Chicago Yellow Cab Company, Inc. at not less than $12.00 per share net to the company on the terms and conditions set forth in the contract.

Upon motion duly made by Mr. Fulton, seconded by Mr. White and carried, it was

RESOLVED that Thomas B. Hogan be and he is hereby employed as General Manager of the company for a period of three years from January 1, 1936, at a salary of $24,000 per annum, payable in equal monthly installments on the 25th day of each month, and that this corporation make available, for a period of sixty (60) days from December 19, 1935, for purchase by Mr. Hogan, 2500 shares

of the capital stock of Chicago Yellow Cab Company, Inc. at not less than $12.00 per share net to the company, all as provided in the contract presented to this meeting.

FURTHER RESOLVED that the said Employment Contract between this corporation and Thomas B. Hogan, dated December 19, 1935, presented and read at this meeting, be and the same is hereby approved and that the Vice-President be and he is hereby authorized and directed to sign said contract in the name and on behalf of this corporation.

Mr. Hogan thereupon reentered the meeting and, upon being informed of the action of the Board announced
2129A that he would accept the employment to act as General Manager of the corporation for a three-year period beginning January 1, 1936, upon the terms and conditions stated in said contract.

Mr. Samuels thereupon retired from the meeting and Mr. Hogan resumed the chairmanship of the meeting.

The chairman thereupon presented a proposed Employment Contract between this corporation and Benjamin Samuels, dated December 19, 1935, wherein this corporation employs Mr. Samuels to act as Manager of the Legal and Claims Department upon substantially the same terms and conditions as those contained in the contract with Mr. Hogan.

Upon motion duly made, seconded and carried, it was

RESOLVED that Benjamin Samuels be and he is hereby employed as Manager of the Legal and Claims Department of the company for a period of three years from January 1, 1936, at a salary of $24,000 per annum, payable in equal monthly installments on the 25th day of each month, and that this corporation make available, for a period of sixty (60) days from December 19, 1935, for purchase by Mr. Samuels, 2500 shares of the capital stock of Chicago Yellow Cab Company, Inc. at not less than $12.00 per share net to the company, all as provided in the contract presented to this meeting.

FURTHER RESOLVED that the said Employment Contract between this corporation and Benjamin Samuels, dated December 19, 1935, presented and read at this meeting, be and the same is hereby approved and that the President be and he is hereby authorized and directed to sign said contract in the name and on behalf of this corporation.

Mr. Samuels thereupon reentered the meeting and, upon being informed of the action of the Board, announced that

he would accept the employment to act as Manager of the Legal and Claims Department of the corporation for a three-year period beginning January 1, 1936, upon the terms and conditions stated in said contract.

Mr. Ralph E. Stouffer thereupon retired from the meeting.

The chairman thereupon presented a proposed Employment Contract dated as of December 19, 1935, between Ralph E. Stouffer and this corporation, wherein this corporation employs Mr. Stouffer to act as its Maintenance Superintendent for a period of three years beginning January 1, 1936, and ending December 31, 1938, at a salary of $12,000 per annum, payable in equal monthly installments on the 25th day of each month, and which provides that this company will make available for sale to Mr. Stouffer, for a period of sixty (60) days from December 19, 1935, 500 shares of the capital stock of Chicago Yellow Cab Company, Inc. at not less than $12.00 per share net to the company on the terms and conditions set forth in the contract.

2130 Upon motion duly made, seconded and carried, it was

RESOLVED that Ralph E. Stouffer be and he is hereby employed as Maintenance Superintendent of the company for a period of three years from January 1, 1936, at a salary of $12,000 per annum, payable in equal monthly installments on the 25th day of each month, and that this corporation make available for a period of sixty (60) days from December 19, 1935, for purchase by Mr. Stouffer, 500 shares of the capital stock of Chicago Yellow Cab Company, Inc. at not less than $12.00 per share net to the company, all as provided in the contract presented to this meeting.

FURTHER RESOLVED that the said Employment Contract between this corporation and Ralph E. Stouffer, dated December 19, 1935, presented and read at this meeting, be and the same is hereby approved and that the President be and he is hereby authorized and directed to sign said contract in the name and on behalf of this corporation.

Mr. Stouffer thereupon reentered the meeting and, upon being informed of the action of the Board, announced that he would accept the employment to act as Maintenance Superintendent of the corporation for a three-year period beginning January 1, 1936, upon the terms and conditions stated in said contract.

Mr. R. H. Bieze thereupon retired from the meeting.

The chairman thereupon presented a proposed Employment Contract between this corporation and R. H. Bieze, dated December 19, 1935, wherein this corporation employs Mr. Bieze to act as its Comptroller upon substantially the same terms and conditions as those contained in the contract with Mr. Stouffer.

Upon motion duly made, seconded and carried, it was

RESOLVED that R. H. Bieze be and he is hereby employed as Comptroller of the company for a period of three years from January 1, 1936, at a salary of $12,000 per annum, payable in equal monthly installments on the 25th day of each month, and that this corporation make available, for a period of sixty (60) days from December 19, 1935, for purchase by Mr. Bieze, 500 shares of the capital stock of Chicago Yellow Cab Company, Inc. at not less than $12.00 per share net to the company, all as provided in the contract presented to this meeting.

FURTHER RESOLVED that the said Employment Contract between this corporation and R. H. Bieze, dated December 19, 1935, presented and read at this meeting, be and the same is hereby approved and that the President be and he is hereby authorized and directed to sign said contract in the name and behalf of this corporation.

Mr. Bieze thereupon reentered the meeting and, upon being informed of the action of the Board, announced
2131 that he would accept the employment to act as Comptroller of the corporation for a three-year period beginning January 1, 1936, upon the terms and conditions stated in said contract.

Mr. Levin Rank, President of Parmelee Transportation Company, and Mr. Morris Markin thereupon retired from the meeting.

Mr. Samuels thereupon stated that the contract between this corporation and Transportation Management Corporation, which had been assigned to Parmelee Transportation Company and under which this corporation is operating, expires December 31, 1935, and stated that Parmelee Transportation Company had indicated its willingness to extend this contract for the same consideration, *i. e.* $50,000 per annum, for an additional three years; that the terms and conditions of the contract would be the same as the present contract with the elimination of Paragraph VIII referring to Mr. Ernest H. Miller and his associates in said contract.

A full discussion was had concerning the benefits heretofore derived from the existing Management Contract and to be derived from a renewal thereof.

Upon motion duly made, seconded and carried, it was

RESOLVED that the President of this corporation be and he is hereby authorized to sign and execute in the name and on behalf of this corporation the extension agreement presented to this meeting, extending the Management Contract between this corporation and Parmelee Transportation Company for a period of three years.

FURTHER RESOLVED that the Secretary be and he is hereby authorized to insert a copy of such extension agreement in the minutes of this meeting as a part thereof.

Mr. Rank and Mr. Markin thereupon reentered the meeting.

Mr. Dwight P. Green and Miss M. L. Middlekauff of the firm of Kirkland, Fleming, Green & Martin thereupon retired from the meeting.

Upon motion duly made, seconded and carried, it was

RESOLVED that Kirkland, Fleming, Green & Martin, Chicago, Illinois, be and they are hereby appointed General Counsel for this corporation for the year 1936.

Mr. Green and Miss Middlekauff thereupon reentered the meeting.

* * *

Mr. Samuels thereupon stated that the Class A stock of The Waverly Corporation, which had been originally issued to this corporation, had been sold by this corporation for the sum of $25,000. He further stated that the holders of such Class A stock were willing to have this corporation reacquire such stock upon its returning to them the consideration which this corporation received for said stock.

Upon motion duly made, seconded and carried, it was

2132 RESOLVED that this corporation acquire the 10,000 shares Class A stock of The Waverly Corporation and in consideration thereof return to the holders of said stock the consideration heretofore received by this corporation from the sale of said stock.

Mr. Samuels thereupon stated that this corporation now owns all of the outstanding stock of The Waverly Corporation, consisting of 13,000 shares of 7% cumulative preferred stock, 10,000 shares of Class A stock of no par value, and 10,000 shares of common stock of no par value.

Upon motion duly made, seconded and carried it was

RESOLVED that a dividend consisting of and payable in 13,000 shares of 7% cumulative preferred stock, 10,000 shares of Class A stock of no par value, and 10,000 shares of common stock of no par value of The Waverly Corporation (being all of its outstanding capital stock), together with accrued dividends on the preferred stock amounting to $8,594.45 be and the same is hereby declared payable to the stockholder of record of this corporation on this date, being Chicago Yellow Cab Company, Inc.

Gov't. Ex. 198. (December 21, 1935, letter from Lee A. Kelley to Waverly.)

I beg to advise you that I am purchasing from you, for a client of mine, 24,287 shares of the capital stock of Chicago Yellow Cab Company, Inc. at $12⅜ per share, payment to be made against delivery to my representative, The City National Bank of Chicago.

Gov't. Ex. 200. (May 4, 1945, letter from R. H. Bieze, Treasurer of Chicago Yellow to Markin.)

As you know, Chicago Yellow Cab Company, Inc., annual stockholders meeting will be held in New York on Tuesday, May 15, 1945.

Up to today, we have received proxies on 73,345 shares which would not be sufficient to hold a meeting.

2133 The proxy of Parmelee Transportation Company covering 75,930 shares and the proxy of L. A. Kelley covering 24,287 shares, have not been received.

Gov't. Ex. 201. (April 28, 1945, letter from Helen Logan to Markin)

We are pleased to enclose herewith proxy signed by L. A. Kelley for the stockholders' meeting of Chicago Yellow Cab Company, Inc. to be held May 15, 1945.

Gov't. Ex. 202. (April 16, 1936, Minutes of Directors' Meeting of Chicago Yellow)

Present: Benjamin Samuels, Thomas B. Hogan, R. H. Bieze, Joseph J. White, Paul L. Houston, J. L. Kesner, Ralph E. Stouffer, Levin Rank, I. N. Nelson constituting the entire Board of Directors. Messrs. Frank D. Fulton and Paul E. Keller of the Board of Directors of Yellow Cab Company, and Mr. Walter S. Laird of the Board of Directors of Benzoline Motor Fuel Co., were also present.

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Upon motion duly made, seconded and carried, the following preambles and resolutions were adopted:

WHEREAS the authorized and outstanding capital stock of this corporation consists of 400,000 shares, of which 100,000 shares are owned and held by The Waverly Corporation, a wholly owned subsidiary of this corporation; and

WHEREAS in the judgment of this Board of Directors none of such 100,000 shares should be sold, transferred or otherwise disposed of except to this corporation or one of its subsidiaries; and

WHEREAS before such restriction is imposed in respect of such shares, it is advisable to obtain authority therefor from the stockholders of this corporation;

NOW THEREFORE, BE IT RESOLVED that appropriate resolutions be submitted to the vote of the stockholders of this corporation at their annual meeting to be held on May 12, 1936, authorizing and directing that none of such 100,000 shares of the capital stock of this corporation now held by The Waverly Corporation be sold, transferred or otherwise disposed of, except to this corporation or one of its subsidiaries, without the approval of the holders of a majority of the shares of this corporation outstanding and entitled to vote at the time of such approval, which shall be evidenced by appropriate resolutions adopted by such holders at a meeting of the stockholders of the corporation duly called for the purpose or for such purpose among others.

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2134 The chairman stated that according to the by-laws of the corporation the annual meeting of stockholders was to be held at Room 332—120 Broadway, in the Borough of Manhattan, City, County and State of New York, on the 12th day of May, 1936, at two o'clock P. M., New York Daylight Saving Time, and that it was advisable for the Board of Directors to fix a record date for the determination of the stockholders entitled to receive such notice and to vote at such meeting, to select the persons who are to act as proxies at such meeting, and to approve the form of notice and proxy to be mailed to the stockholders of the corporation in respect of such meeting.

Upon motion duly made, seconded and carried, it was

RESOLVED that stockholders of record as of the close of business April 27, 1936, shall be entitled to notice of the annual meeting of stockholders of this corporation

to be held at 332—120 Broadway, Borough of Manhattan, City, County and State of New York, on the 12th day of May, 1936, at two o'clock P. M. (New York Daylight Saving Time), . . .

• • •

Upon motion duly made, seconded and carried, it was

RESOLVED that F. H. Butehorn, Benjamin Samuels and Thomas B. Hogan be and they are hereby selected to be named as proxies . . . and such proxies . . . are hereby authorized and directed to attend and vote at the annual meeting of stockholders of this corporation to be held May 12, 1936, all of the shares of stock represented by such proxies at said meeting in favor of—

(1) The election of such persons as directors of this corporation, to serve until the next annual meeting of stockholders following such election and until their successors are elected and qualified, as shall be nominated by the management of this corporation; and

(2) In favor of resolutions authorizing and directing that none of the 100,000 shares of stock of this corporation held by The Waverly Corporation shall be sold, transferred or disposed of, except to this corporation or one of its subsidiaries, without the approval of a majority of the holders of the outstanding shares of stock of this corporation entitled to vote at the time of such approval, which shall be evidenced by appropriate resolutions adopted at a meeting of the stockholders of this corporation duly called for the purpose or for such purpose among others.

Gov't. Ex. 203. (July 16, 1936, Minutes of Directors' Meeting of Chicago Yellow.)

The following directors were present: Thomas B. Hogan, Benjamin Samuels, R. H. Bieze, Ralph E. Stouffer,
2135 Levin Rank, James A. King constituting a majority of the Board of Directors.

Messrs. Paul E. Keller, Joseph J. White and Frank D. Fulton, of the Board of Directors of Yellow Cab Company, were also present at the meeting.

Mr. Benjamin Samuels, President of the corporation, acted as chairman of the meeting, and Mr. R. H. Bieze, Secretary of the corporation, acted as secretary.

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The chairman stated that all of the directors present at this meeting had been present at the meetings of the

directors and stockholders of The Waverly Corporation held immediately preceding this meeting.

Upon motion duly made, seconded and carried, it was

RESOLVED that the action of the President and Secretary of this corporation in executing a waiver of notice and proxy in connection with a special meeting of stockholders of The Waverly Corporation, authorizing a Plan of Liquidation of The Waverly Corporation and the distribution of The Waverly Corporation to this corporation, its sole stockholder, of all of its assets, subject to all of its liabilities, which this corporation agrees to assume and pay, in complete cancellation of all of the preferred, Class A and common stock of said The Waverly Corporation owned by this corporation, be and the same is hereby ratified, confirmed and approved.

FURTHER RESOLVED that the Plan of Liquidation adopted by the Board of Directors and stockholders of The Waverly Corporation at the meetings held immediately preceding this meeting be and the same is hereby ratified, confirmed and approved, and such Plan of Liquidation of The Waverly Corporation is hereby adopted by this corporation.

* * *

The chairman thereupon stated that upon the receipt of all of the assets of The Waverly Corporation, this corporation would own 100,000 shares of its own capital stock, and that it seemed advisable to reduce the authorized capital stock from 400,000 shares without par value to 300,000 shares without par value by retiring and cancelling the 100,000 shares of its issued stock without par value which would, upon the receipt of said assets from The Waverly Corporation, become treasury stock of this corporation, and to reduce the capital of this corporation by the amount paid in on account of such 100,000 shares which are to be retired and cancelled, namely $550,000.00, so that the authorized capital stock of this corporation, upon the filing of an amendment to the Certificate of Incorporation, would be 300,000 shares without par value and the capital of this corporation would be $1,650,000.00.

2136 After a full discussion, upon motion duly made, seconded and carried, the following resolutions were adopted:

RESOLVED that in the judgment of this Board of Directors it is advisable and most for the benefit of Chicago Yellow Cab Company, Inc. that the capital with which

the corporation will carry on business be decreased from $2,200,000.00 to $1,650,000.00, and that the number of shares of capital stock that may be issued by the corporation be reduced from 400,000 shares without par value to 300,000 shares without par value, and that such action be effected by the retirement and cancellation of 100,000 of its issued shares without par value which are owned by this corporation, having been received by it on the liquidation and dissolution of The Waverly Corporation.

Gov't. Ex. 204. (May 18, 1937, letter from Arthur Young to Samuels, with attachments.)

The Waverly Corporation, a wholly owned subsidiary of Chicago Yellow Cab Company, Inc., surrendered all of its assets, subject to its liabilities, to its parent company on July 31, 1936. In exchange for the net assets so surrendered The Waverly Corporation received all of its capital stock and was dissolved. Stockholders of The Waverly Corporation authorized these actions at a special meeting held on July 17, 1936.

Submitted as Exhibit *A* is a balance sheet of The Waverly Corporation as at July 31, 1936, and as Exhibit *B* is a statement of profit and loss and surplus for the period from December 31, 1935 to July 31, 1936.

Gov't. Ex. 205. (September 23, 1940, letter from Bieze, Treasurer of Yellow to Oakland of CCM, there being attached a letter dated September 5, 1940 to William J. Campbell.)

September 5, 1940

Mr. Wm. J. Campbell,
United States District Attorney, U. S. Courthouse,
Chicago, Illinois.

Dear Sir: *Re:* CHICAGO YELLOW CAB COMPANY, INC. AND YELLOW CAB COMPANY VS. CARTER H. HARRISON COLLECTOR, ETC. IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION No. 365.

• • •

2137 (a) Briefly the history of this case is as follows: Prior to 1931 Yellow Cab Company a wholly owned subsidiary of Chicago Yellow Cab Company, Inc., had purchased 61,565 shares of its parent company in the open market, at prices ranging from $43.44 per share to $9.00

per share. In 1931 Yellow Cab Company sold 60,000 of the shares of Chicago Yellow Cab Company, Inc. to The Waverly Corporation, at $10.00 per share, which was approximately the market value of the shares at the time of the sale. Yellow Cab Company thus incurred a loss of $950,485.19, which was deducted by the taxpayers in their 1931 Income Tax Return. The Commissioner of Internal Revenue challenged this deduction on the grounds that for income tax purposes the sale was not effective. . . . This suit by the taxpayers for the refund followed. The only issue of consequence in the case is the validity, for income tax purposes, of the sale of shares of Chicago Yellow Cab Company, Inc. in 1931 by Yellow Cab Company to The Waverly Corporation. At the time of the sale The Waverly Corporation, a Delaware corporation, had an authorized capital stock of 2,000 shares of First Preferred Stock, 1,000 shares of Second Preferred Stock and 6,000 shares of Common Stock. At the time of the sale First Chicago Corporation, an Illinois corporation in which neither The Waverly Corporation, Chicago Yellow Cab Company, Inc. or any of its subsidiaries had any interest, owned and held all of the First Preferred Stock and all of the Second Preferred Stock of the Waverly Corporation, and Yellow Cab Company owned and held all of the Common Stock of The Waverly Corporation. Such First Preferred Stock, Second Preferred Stock and Common Stock were issued to such owners and holders for cash.

• • •

. . . First Chicago Corporation, having an investment in the company of $264,000.00, and that because of the existence of that stockholder there occurred as a result of the sale a shift in the economic benefits and responsibilities of the shares so sold, the reality of which must be recognized. Even though it should appear that agreements were made prior to purchase by The First Chicago Corporation in respect of the redemption of the shares purchased by it in The Waverly Corporation and certain restrictions were imposed upon the use of the invested capital, we nevertheless would urge in the prosecution of the case that at the time of the sale by Yellow Cab Company to The Waverly Corporation of the shares of Chicago Yellow Cab Company, Inc. the capital invested by First Chicago Corporation was at the risk of The Waverly Corporation and
2138 constituted the First Chicago Corporation a real stockholder in The Waverly Corporation.

(c) Furthermore, we would contend in the prosecution of the case that there was a real business reason for the organization of The Waverly Corporation and of the challenged sale. Yellow Cab Company owns and operates the principal taxicab line in the City of Chicago. For two years prior to 1931 this company had dominated in taxicab operations in this city. Chicago, as you well know, is unique among large cities in that it is served by only two principal taxicab companies, of which Yellow Cab Company is by far the elder and the larger. On September 25, 1929 the City Council of the City of Chicago adopted an ordinance providing for the licensing and regulation of taxicabs through the Public Vehicle License Commission. Pursuant to this ordinance the Commission created thereby undertook an investigation of the affairs of Yellow Cab Company with a view of determining the financial responsibility, the public necessity and convenience of its operations and the fairness of its rates. Such an investigation was a new experience for the taxpayers. Prior to that time no inquiry had been made into the fairness of its rates or the public necessity and convenience of its operation. It became immediately apparent to the management that the company's investment in the shares of its parent would become, as it did become, a controversial subject in the Commission's investigation. Especially vulnerable was the company in view of the high prices which had been paid for the shares of the parent company. Equally difficult to explain was the investment of operating funds in the acquisition of the parent company's shares. These anxieties naturally led to the conclusion to remove the shares from the company's assets and realize the loss with which the company was faced. The sale of the shares at that time on the open market would have unnecessarily depressed values for the stockholders of the parent company. To accomplish the purposes of disposition and realization of loss and at the same time protect the market against such a depression The Waverly Corporation was organized into which was invited the outside stockholder. We will urge that these purposes were real and that the motives of the taxpayers were sincere. We doubt that the court will undertake to weight their merit beyond the point of recognizing their existence about which there can be no serious controversy. The business aspect of the transaction was a matter within the discretion of the management into which in the absence of abuse the court will not inquire.

(d) In 1934 The Waverly Corporation sold 2,000 of the shares and in 1935 it sold 32,287 of the shares of
2139 Chicago Yellow Cab Company, Inc. which were acquired in 1931 from Yellow Cab Company. . . . In December 19, 1935 The Waverly Corporation became a wholly owned subsidiary of Chicago Yellow Cab Company, Inc. In 1936 The Waverly Corporation was completely liquidated and dissolved and all of its assets were transferred to its sole stockholder at that time, Chicago Yellow Cab Company, Inc. This we submit justifies reimbursement to Chicago Yellow Cab Company, Inc. for such overpayment of taxes by The Waverly Corporation.

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Respectfully submitted,

KIRKLAND, FLEMING, GREEN, MARTIN & ELLIS
By (Signed) DWIGHT P. GREEN
A Partner

D'ANCONA, PFLAUM & KOHLSAAT
By (Signed) HARRY N. WYATT

Gov't. Ex. 206. (Plaintiff's Interrogatory No. 23.)

To all defendants. Did you at any time during the period from December 15, 1931 to August 1, 1936, own, directly or indirectly, any shares of the capital stock of The Waverly Corporation? If so, state:

(a) The date of each acquisition of such stock by you, the amount of stock acquired by each acquisition, the name of the seller, and the consideration paid;

(b) The date of each sale and other disposition by you, directly and indirectly, of such capital stock, the amount of stock involved in each transaction, the name of the buyer, and the consideration received.

Gov't. Ex. 207. (Yellow's answer to plaintiff's Interrogatory No. 23.)

Date	*No. & Kind of Shares*	*Buyer*	*Seller*
Dec. 1931	6,000 Common	Yellow Cab Co.	The Waverly Corp.
Dec. 1932*	11,500 Preferred)	Yellow Cab Co.	The Waverly Corp.
	10,000 Common)		
Jan. 1933	10,000 Class A	Yellow Cab Co.	Ernest H. Miller
Jan. 1933	10,000 Class A	Morris Markin	Yellow Cab Co.
Nov. 1934	1,100 Preferred	Yellow Cab Co.	The Waverly Corp.
Apr. 1935	400 Preferred	Yellow Cab Co.	The Waverly Corp.
Dec. 1935†	7,600 Class A	Yellow Cab Co.	Morris Markin
4-30-36	1,000 Class A	Yellow Cab Co.	Thos. B. Hogan
	1,000 Class A	Yellow Cab Co.	Benjamin Samuels
	600 Class A	Yellow Cab Co.	Sol Kessner
	400 Class A	Yellow Cab Co.	Rudolph H. Bieze

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Date	No. & Kind of Shares		Buyer	Seller
Dec. 1935†	13,000	Preferred	Chicago Yellow Cab Co.	Yellow Cab.
4-30-36	10,000	Class A		
	10,000	Common		

The consideration for each purchase was cash or notes except by a reorganization effected in December, 1932, noted with an asterisk, Yellow Cab Company received the preferred and common stock noted in exchange for its 6,000 shares of common stock. As indicated by the dagger (†), Yellow Cab Company acquired all the outstanding stock of Waverly which was transferred to Chicago Yellow Cab Company and Waverly was liquidated.

Gov't. Ex. 208. (Chicago Yellow's answer to plaintiff's Interrogatory No. 23.)

Date	No. & Kind of Shares		Buyer	Seller
(Dec. 1935)	13,000	Preferred	Chicago Yellow Cab	Yellow Cab Co.
(Apr. 1936)	10,000	Class A		
	10,000	Common		

The Waverly Corporation was liquidated on or about April 30, 1936.

Gov't. Ex. 209. (Markin's answer to plaintiff's Interrogatory No. 23.)

Yes (a) and (b)

Date	No. of Shares	Buyer	Seller
Jan. 21, 1933	10,000	Markin	Yellow
Jan. 21, 1933	2,333	Paul C. L'Amoreaux	Markin
Jan. 21, 1933	1,000	Thomas B. Hogan	Markin
Jan. 21, 1933	1,000	Benjamin Samuels	Markin
Jan. 21, 1933	600	Sol Kesner	Markin
Jan. 21, 1933	400	Rudolph H. Bieze	Markin
Apr. 2, 1934	600	Markin	Estate of Sol Kesner
May 11, 1934	2,333	Markin	Estate of Paul C. L'Amoreaux
Apr. 30, 1936	7,600	Yellow	Markin

The consideration for each purchase was cash or notes; and in each instance the purchase price was the same, so that no gain or loss was realized on any transaction.

2141 *Gov't Ex. 210. (Plaintiff's Interrogatory No. 9.)*

To Chicago Yellow, Parmelee and Yellow (Yellow need not answer paragraphs (a) and (b). With respect to your denial of the allegations of paragraph 23 of the amended complaint, state:

(a) As of the time of each annual meeting of your stockholders for each year, 1929 to 1946, inclusive:
  (1) The total number of shares of stock outstanding;
  (2) Total number of share holders;
  (3) Total number of shares held in the treasury of the company;
  (4) Total number of shares owned by your subsidiaries;
  (5) The names of all stockholders owning more than 1,000 shares of stock, together with the number of shares owned by each.

(b) Concerning each annual meeting of your stockholders for each year 1929 to 1946, inclusive:
  (1) Names of share holders present in person and number of shares owned by each;
  (2) Names of all stockholders owning more than 1,000 shares of stock represented by proxy, the amount of stock owned by each, and the names of each person, or persons to whom the proxies of each such stockholder ran.

(c) With respect to each meeting of your Board of Directors, 1929 to 1946, inclusive, and during the period from January 1, 1947 to August 29, 1947:
  (1) The date of each such meeting;
  (2) The names of all directors present at each such meeting;
  (3) The names of persons not members of the Board who were present at each such meeting and who were then connected with a concern, or an affiliate thereof, that is a defendant in this action.

2142 *Gov't. Ex, 211. Parmelee's answer to plaintiff's Interrogatory No. 9 (a) (1) (2), (3) and (4).*

Gov't. Ex. 212. Parmelee's answer to plaintiff's Interrogatory No. 9 (a)(5).

Gov't. Ex. 213. Parmelee's answer to plaintiff's Interrogatory No. 9 (b).

Gov't. Ex. 214. Parmelee's answer to plaintiff's Interrogatory No. 9 (c).

Gov't. Ex. 215. Chicago Yellow's answer to plaintiff's Interrogatory No. 9.

Gov't. Ex. 216. Exhibit "1" attached to Chicago Yellow's answer (common stockholders).

Gov't. Ex. 217. Exhibit "2" attached to Chicago Yellow's answer (Chicago Yellow stockholders having more than one thousand shares.)

Gov't. Ex. 218. Exhibit "3" attached to Chicago Yellow's answer (answer to plaintiff's Interrogatory No. 9 (b) (1)).

Gov't. Ex. 219. Exhibit "4" attached to Chicago Yellow's answer (answer to plaintiff's Interrogatory No. 9 (b) (2)).

Gov't. Ex. 220. Exhibit "5" attached to Chicago Yellow's answer (answer to plaintiff's Interrogatory No. 9 (c) (1), (2) and (3)).

Gov't. Ex. 221. Yellow's answer to plaintiff's Interrogatory No. 9.

Gov't. Ex. 222. Plaintiff's Interrogatory No. 10.

To Chicago Yellow, Yellow, Cab Sales, Parmelee, Checker and CCM. State, with respect to each of your respective companies, the names of all officers and directors (giving title of office), 1929 to 1946, inclusive, the date each was elected to his respective office, and the date each resigned or retired from each office.

Gov't. Ex. 223. CCM's answer to plaintiff's Interrogatory No. 10.

2143 *Gov't. Ex. 224. Parmelee's answer to plaintiff's Interrogatory No. 10.*

Gov't. Ex. 225. Chicago Yellow's answer to plaintiff's Interrogatory No. 10.

Gov't. Ex. 226. Yellow's answer to plaintiff's Interrogatory No. 10.

Gov't. Ex. 227. Cab Sales' answer to plaintiff's Interrogatory No. 10.

Gov't. Ex. 228. Checker's answer to plaintiff's Interrogatory No. 10.

Gov't. Ex. 229. Plaintiff's Interrogatory No. 13.

To Parmelee. State the names of all officers and directors of each of your subsidiaries (giving title of office) from 1929 to 1946, inclusive, the date each was elected to his

respective office, and the date each resigned or retired from each office.

Gov't. Ex. 230. Parmelee's answer to plaintiff's Interrogatory No. 13.

Gov't. Ex. 231. Plaintiff's Interrogatory No. 11.

To CCM. State, with respect to the Executive Committee of your Board of Directors for each year 1929 to 1946, inclusive, and during the period from January 1, 1946 to August 29, 1947:

(a) The name of each member thereof, giving the date each such member was elected or appointed and the date each such member resigned or retired from the Committee;

(b) The functions and duties of such Committee as defined in your Articles of Incorporation and By-Laws.

Gov't. Ex. 232. CCM's answer to plaintiff's Interrogatory No. 11

2144 *Gov. Ex. 233 (Nov. 18, 1937, Minutes of Directors Meeting of Chicago Yellow)*

The following directors were present:

Benjamin Samuels	Paul L. Houston
Thomas B. Hogan	Walter S. Laird
R. H. Bieze	Levin Rank
Ralph E. Stouffer	

constituting a majority of the Board of Directors.

Mr. Benjamin Samuels acted as chairman of the meeting and Mr. R. H. Bieze acted as secretary.

* * *

The chairman thereupon reported that pursuant to authority of the Board of Directors at the last meeting of the Board held October 21st, Utilities Motor Fuel Co., Inc. had been organized under the laws of the State of Indiana November 2, 1937, and that this corporation had subscribed for and paid for 1000 shares of the capital stock of $100.00 par value of the Indiana corporation, and that said shares are now issued and outstanding in the name of this corporation. He also reported that the officers and directors designated by the Board at the last meeting had been elected officers and directors of the Indiana corporation and that the Indiana corporation had entered into a contract with Standard Oil Company, an Indiana corporation, for the purchase of gasoline, and with Sprout & Davis, Inc., an Indiana corporation, for the trucking of

gasoline to the garages of Yellow Cab Company and such other customers in Chicago as the Indiana corporation may obtain. He also reported that application had been made to the State of Indiana for a motor vehicle fuel dealer's license, and that in connection with obtaining such license it was necessary for the Indiana corporation to file a $10,000.00 bond with the State of Indiana providing for the payment, collection and distribution of license fee on the use of gasoline in Indiana. He further stated that in order to avoid the necessity of having the Indiana corporation deposit securities or cash with the surety company writing such bond, it had seemed advisable for this corporation to furnish its corporate indemnity in support of the application to the bonding company for such bonds and that the bonding company had requested a certified copy of a resolution adopted by this Board of Directors ratifying the action of the officers in furnishing this corporation's corporate indemnity in supprt of the application of the Indiana corporation. The chairman thereupon presented and read the agreement which this corporation signed with United States Fidelity and Guaranty Company.

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2145 Upon motion duly made, seconded and carried, it was

RESOLVED that the Board of Directors of Utilities Motor Fuel Co., Inc., be and it is hereby authorized to direct its officers to enter into contracts with Yellow Cab Company, Cab Sales and Parts Corporation, Chicago Motor Coach Company, and Benzoline Motor Fuel Co., under which Utilities Motor Fuel Co., Inc., agrees to sell gasoline and other motor fuel products for a period of approximately one year.

Gov. Ex. 234 (Nov. 18, 1937, Minutes of Directors Meeting of Yellow)

The following directors were present:

Thomas B. Hogan	Paul L. Houston
Benjamin Samuels	Walter S. Laird
R. H. Bieze	Levin Rank
Ralph E. Stouffer	

constituting the entire Board of Directors.

Mr. Thomas B. Hogan acted as chairman of the meeting and Mr. R. H. Bieze acted as secretary.

• • •

Upon motion duly made, seconded and carried, it was

RESOLVED that the officers of this corporation be and they are hereby authorized to sign and execute in the name and on behalf of this corporation, and under its corporate seal or otherwise, a contract with Utilities Motor Fuel Co., Inc., an Indiana corporation, under which this corporation shall purchase its gasoline requirements from Utilities Motor Fuel Co., Inc., for a period ending November 9, 1938.

Gov. Ex. 235 (Dec. 20, 1938; Minutes of Directors Meeting of Utilities)

The following directors were present:

R. H. Bieze
Thomas B. Hogan
Walter S. Laird
Levin Rank
Benjamin Samuels

constituting the entire Board of Directors.

Mr. Thomas B. Hogan acted as chairman of the meeting and Mr. R. H. Bieze acted as secretary.

• • •

The chairman thereupon presented a contract between this corporation and Standard Oil Company, an Indiana Corporation, dated November 9, 1938, covering the terms by which this corporation will purchase gasoline from Standard Oil Company for a one-year period.

Upon motion duly made, seconded and carried, it was

RESOLVED that the action of the Vice President and General Manager of this corporation in signing and executing in the name and on behalf of this corporation the contract dated November 9, 1938, presented and read
2146 at this meeting, between this corporation and Standard Oil Company, an Indiana Corporation, for the purchase by this corporation of gasoline for the period from November 9, 1938, to November 9, 1939, be and the same is hereby ratified, confirmed and approved.

The chairman thereupon presented three contracts, dated November 9, 1938, one of which was between this corporation and Yellow Cab Company, one of which was between this corporation and Cab Sales and Parts Corporation, and one of which was between this corporation and Parmelee Transportation Company, and stated that the contracts covered the terms of the Agreement whereby said companies will purchase gasoline from this corporation for a one-year period.

Upon motion duly made, seconded and carried, it was

RESOLVED that the action of the Vice President and General Manager of this corporation in executing contracts dated November 9, 1938, between this corporation and Yellow Cab Company, between this corporation and Cab Sales and Parts Corporation, and between this corporation and Parmelee Transportation Company, presented and read at this meeting, for the sale and delivery of gasoline by this corporation at the respective garages designed by the purchasers in Chicago, Illinois, for the period from November 9, 1938, to November 9, 1939, be and the same is hereby ratified, confirmed and approved.

* * *

The President reported the amount of business transacted for the eleven-month period ended November 30, 1938. He reported also the amount of cash on hand as of the date of the meeting and made a statement of earnings.

Upon motion duly made, seconded and carried, it was

RESOLVED that a dividend of $35.00 per share be and the same is hereby declared on the 1,000 shares of capital stock of this corporation (or a total of $35,000.00), payable in cash December 24, 1938, to shareholders of record as of the close of business December 20, 1938.

Gov. Ex. 236 (Oct. 19, 1939. Minutes of Directors Meeting of Utilities)

The following directors were present:

Walter S. Laird
R. H. Bieze
Alfred H. Rhodes

constituting the entire Board of Directors.

Mr. Walter S. Laird acted as chairman of the meeting and Mr. R. H. Bieze acted as secretary.

* * *

The chairman thereupon presented three proposed contracts dated November 9, 1939, one of which was be-
2147 tween this corporation and Yellow Cab Company, one of which was between this corporation and Cab Sales and Parts Corporation, and one of which was between this corporation and Parmelee Transportation Company, and stated that the contracts covered the terms of the agreement whereby said companies will purchase gasoline from this corporation for a one-year period from November 10, 1939, to November 9, 1940. . . .

Gov. Ex. 237 (Oct. 27, 1943, Minutes of Directors Meeting of Utilities)

The following directors were present:

Walter S. Laird
R. H. Bieze
Alfred H. Rhodes

constituting the entire Board of Directors.

Mr. Walter S. Laird acted as chairman of the meeting and Mr. R. H. Bieze acted as secretary.

* * *

Upon motion duly made, seconded and carried, the following preambles and resolutions were adopted:

WHEREAS, there has been presented to this meeting a proposed agreement to be entered into and dated as of November 10, 1943, between this Company and Cab Sales & Parts Corporation, pursuant to which said Cab Sales & Parts Corporation agrees to purchase gasoline from this Company according to the terms and provisions of said Agreement;

NOW, THEREFORE, BE IT RESOLVED, that said agreement be approved . . .

* * *

Upon motion duly made, seconded and carried, the following preamble and resolutions were adopted:

WHEREAS, there has been presented to this meeting a proposed agreement to be entered into and dated as of November 10, 1943, between this Company and Yellow Cab Company, pursuant to which said Yellow Cab Company agrees to purchase gasoline from this Company according to the terms and provisions of this agreement;

NOW, THEREFORE, BE IT RESOLVED, that said agreement be approved . . .

Upon motion duly made, seconded and carried, the following preambles and resolutions were adopted:

WHEREAS, there has been presented to this meeting a proposed agreement to be entered into and dated as of November 10, 1943, between this Company and Parmelee Transportation Company pursuant to which said Parmelee Transportation Company agrees to purchase gasoline from this Company according to the terms and provisions of said agreement:

NOW, THEREFORE, BE IT RESOLVED, that said agreement be approved . . .

2148 *Gov. Ex. 238 (November 13, 1937, Letter from Rank, President of Parmelee to Samuels, V. P. of Yellow)*

I have just found time to write you regarding the understanding that I reached with Messrs. Sokoll and Markin on October 26th, 1937, relative to the subject of your letter of August 24th and Mr. Rattner's letter of July 22nd.

As a result of this understanding, all accident claims or suits settled after October 26th, 1937, irrespective of the date when the accident occurred, involving a Yellow Cab and a Checker Cab in the same accident, will be paid in the following manner:

60%—of the ~~total~~ of the settlement by the Company whose passenger is making the claim.

40%—of the settlement by the other Company involved in the accident.

These proportions to be paid irrespective of liability. The responsibility for settlement and settlement expense to be borne 100% by the Company whose passenger is making the claim.

Gov. Ex. 239 (March 8, 1938, Minutes of Directors Meeting of Parmelee)

Present:

Levin Rank	Charles J. Condon
Raymond J. Wyatt	Paul L. Houston

being a majority of the Board of Directors and a quorum.

Mr. Rank, President of the Corporation, called the meeting to order and presided thereat. Mr. Wyatt, Secretary of the Corporation, acted as Secretary of the meeting and kept the minutes thereof.

• • •

The Chairman then stated that a casualty company under the name of General Transportation Casualty Company was in the process of organization under the laws of the State of New York and that this Corporation had an opportunity to subscribe to a substantial although not a majority interest in the capital stock of the proposed company. He then advised the Board of Directors with respect to the capital, purposes and directorate of the proposed company and with respect to the other subscribers to its capital stock.

Upon motion duly made and seconded, the following resolution was unanimously adopted:

RESOLVED that this Corporation purchase and subscribe to up to but not in excess of 8,100 shares of the par value of $10 each of the capital stock of General Transporta-

tion Casualty Company, a company in the process of
2149 organization under the insurance laws of the State of New York, for the purpose of engaging in the business of writing workmen's compensation insurance and public liability insurance, such subscription to be on such terms and to be made at such time or times as the President of this Corporation may in his discretion approve, and the President and the Treasurer of this Corporation be and each of them hereby severally is authorized, directed and empowered to execute such subscription agreement and to make such payments and to effect such arrangements as may be necessary or convenient in the opinion of the President to carry into effect the intent and purposes of the foregoing resolution.

Upon motion duly made and seconded, the following resolution was unanimously adopted:

RESOLVED that as management advisers of Yellow Cab Company, a Maine corporation, and a wholly-owned subsidiary of Chicago Yellow Cab Company, Inc., this Corporation approve the investment by Chicago Yellow Cab Company, Inc. in 14,940 shares of the par value of $10 each of the capital stock of General Transportation Casualty Company, a company in the process of organization under the insurance laws of the State of New York, at the same price per share as may be paid therefor by this Corporation, and any officer of this Corporation is authorized and directed to evidence the approval of this Company of such investment by Chicago Yellow Cab Company, Inc.

Gov. Ex. 240 (March 23, 1938, Letter from Rank of Parmelee to Freimark, President of Cab Sales)

We are today issuing our check in the amount of $135,000.00 covering subscription to 8,100 shares of the capital stock of the General Transportation Casualty Company. It is understood between us that of the amount so subscribed, $50,000.00 covering 3,000 shares is out of the original allotment to your corporation and that you shall have the right at any time prior to January 1, 1942 to acquire from us the said 3,000 shares . . .

Gov. Ex. 241 (July 20, 1938, Minutes of Directors Meeting of CCM)

There were present at the meeting:

Morris Markin	R. E. Oakland
James A. King	R. S. Pruitt

being a majority of the Board of Directors of the corporation. Mr. Morris Markin acted as Chairman and Mr. Pruitt as Secretary of the meeting.

• • •

Upon motion duly made, seconded and unanimously carried, the following resolutions relative to the Executive Committee of the corporation were adopted:

RESOLVED that this Board of Directors, pursuant to the provisions of paragraph 25 of the By-Laws of this corporation and the laws of the State of New Jersey, appoint and does hereby appoint an Executive Committee, to consist of Morris Markin, R. E. Oakland and R. S. Pruitt, of which Executive Committee Morris Markin is hereby appointed Chairman, to conduct the business and manage the affairs of the corporation during the intervals between the meetings of the Board of Directors, and, subject to the provisions of those resolutions, to have all the powers and authority of this Board of Directors in the management and conduct of the business and affairs of this corporation (which are hereby delegated to said Executive Committee), including (but without limitation) the power to authorize the seal of the corporation to be affixed to all papers which may require it, and to have jurisdiction over the employment and duties of the officers and agents of the corporation; and to have power to fix and determine and to change all salaries of the officers and agents of the corporation; that the members of said Executive Committee shall serve until discharged by resolution of the Board of Directors; that said Executive Committee shall keep regular minutes of its proceedings and report the same to the Board of Directors at each of its meetings; and that all vacancies in the membership of said Executive Committee shall be filled by the Board of Directors at any regular or special meeting thereof; and be it further

RESOLVED that the Executive Committee may meet at any time within or outside the State of New Jersey, upon twenty-four hours' written, oral or telegraphic notice, given by any one member thereof to the other two members thereof, but such notice may in any event be waived either before or after any meeting of the Executive Com-

mittee by an instrument in writing signed by any member of the Executive Committee not present thereat; and be it further

RESOLVED that the Executive Committee is authorized to make such rules and regulations for the conduct of its meetings as it may see fit.

* * *

Mr. Markin then explained that it might be desirable for this corporation to acquire the stock of General Transportation and Casualty Company now owned by the Parmelee Transportation Company, and that he desired to have authority to negotiate with Parmelee Transportation Company for the acquisition of said shares of stock of General Transportation and Casualty Company at a price of not exceeding $135,000.00, being the cost of said stock to the Parmelee Transportation Company.

After general discussion, Mr. Markin was authorized, in his judgment and discretion, to conduct such nego-
2151 tiations with the Parmelee Transportation Company and to acquire the said shares of stock of General Transportation and Casualty Company at not exceeding Parmelee Transportation Company's cost price of $135,000.00.

Gov. Ex. 242 (July 25, 1938, Minutes of Directors Meeting of Parmelee)

Present:

Levin Rank	Charles J. Condon
Paul L. Houston	Raymond J. Wyatt
Walter S. Laird	

being all of the directors of the Corporation and a quorum.

Mr. Rank, President of the Corporation, called the meeting to order and presided thereat. Mr. Wyatt, Secretary of the Corporation, acted as Secretary of the meeting and kept the minutes thereof.

* * *

The Chairman then stated that in order to obtain additional working capital and cash to pay certain existing commitments of the Corporation and of its subsidiaries, he believed it advisable to sell and dispose of the holdings of the Corporation in General Transportation Casualty Company, and there was presented to the meeting the opinion of Chadbourne, Hunt, Jaeckel & Brown, general counsel of the Corporation, with respect to the propriety of the disposition of said stock. He further stated that he had discussed the sale of said stock to Checker Cab Manufacturing Corporation at a price somewhat greater than the cost to this Corporation and he believed that such a

transaction could be consummated and that as part of the transaction this Corporation would be able to obtain an option to repurchase the stock for a period of two years.

Upon motion duly made and seconded, the following resolutions were unanimously adopted:

RESOLVED that the President be and he hereby is authorized, directed and empowered to negotiate with Checker Cab Manufacturing Corporation the sale to it, at a price not less than $17 per share, 8,100 shares of the par value of $10 each of the capital stock of General Transportation Casualty Company owned by this Corporation, provided that as part of said sale this Corporation receive a good and valid option to repurchase said shares for a period of two years from the date of such sale at a price equal to the sales price of said shares plus five cents per share for each month during which said option shall be outstanding.

Gov. Ex. 243 (July 19, 1939, Minutes of Directors Meeting of CCM)

There were present at said meeting:

Morris Markin	R. E. Oakland
James A. King	R. S. Pruitt

2152 being a majority of the Board of Directors of the Corporation. Mr. Morris Markin acted as Chairman and Mr. Pruitt as Secretary of the meeting.

• • •

Mr. Markin next stated that at the annual meeting of the Board of Directors of the Corporation, held July 20, 1938, action had been taken authorizing him to negotiate with Parmelee Transportation Company for the acquisition of 8100 shares of stock of General Transportation and Casualty Company at the cost price of said stock to Parmelee Transportation Company, and that pursuant to said authorization, an agreement had been entered into between Checker Cab Manufacturing Corporation and Parmelee Transportation Company, dated August 9, 1938, in accordance with which Checker Cab Manufacturing Corporation had purchased from Parmelee Transportation Company 8100 shares of the capital stock of General Transportation and Casualty Company, at a price of $17. per share, and had given to Parmelee Transportation Company, the irrevocable option to repurchase said stock at any time within two years from August 9, 1938, at the said price of $17. per share, plus 5¢ per share for each month or part thereof

elapsing between August 9, 1938 and the date of the exercise of such option; that at the time of the organization of General Transportation and Casualty Company for the purpose of carrying certain of the insurance risks of the taxicab operating companies, it had been contemplated that the stock of said General Transportation and Casualty Company would be owned by the operating companies and not by this Corporation; that the purpose of purchasing the stock of General Transportation and Casualty Company from Parmelee Transportation Company was to provide the latter company with funds for the conduct of its business, and at the same time afford this Company an investment for idle funds not then used in its business, and that the purpose in giving back to Parmelee Transportation Company an option on said stock was to enable it at any time within said two year period to reacquire the said shares of stock of General Transportation and Casualty Company at the said price of $17.00 per share, plus a reasonable carrying charge of 5¢ per share per month; that an appropriate footnote disclosing the existence of said option was contained in this Corporation's annual report to its stockholders for the year 1938, but inasmuch as the granting of said option had not been expressly authorized by the directors of the Corporation, he recommended now that the granting of such option and the execution of said agreement between this Corporation and Parmelee Transportation Company be ratified and approved.

The agreement between Checker Cab Manufacturing Corporation and Parmelee Transportation Company, bearing date of August 9, 1938, and duly executed by Mr. Markin as President of Checker Cab Manufacturing Corporation and Levin Rank as President of Parmelee
2153 Transportation Company was then submitted to the Directors for consideration, and upon motion offered and unanimously carried, the following resolution was adopted:

RESOLVED that the action of Morris Markin in negotiating the agreement between this Corporation and Parmelee Transportation Company, dated August 9, 1938, which has been submitted to the Directors at this meeting, shall be and the same is in all respects ratified, approved and confirmed.

Mr. Markin then stated that the General Transportation and Casualty Company expected shortly to qualify as a Surety Company under the laws of New York, in order to

enable it to insure certain risks of this Corporation's subsidiary, Parmelee Transportation Company, and its operating subsidiary, National Transportation Co., Inc., and in connection with such qualification of General Transportation and Casualty Company as a Surety Company under the New York laws, it was necessary for said Corporation to increase its capital and surplus to the extent of $300,000., and General Transportation and Casualty Company, in order to meet this requirement, planned to sell an additional 25,000 shares of its capital stock of the par value of $10. per share at a price of $12. per share, thereby providing new funds in the amount of $300,000., of which $250,000. would be credited to capital account, and $50,000. to paid-in surplus; that the book value of the stock of General Transportation and Casualty Company was approximately $17. per share, represented by cash or marketable securities, and in selling additional stock at $12. per share, it necessarily was obligated in fairness to its present stockholders to offer them subscription rights for the new stock in order that their relative interests in the outstanding stock of the Corporation might be preserved, and that for the same reason, if Checker Cab Manufacturing Corporation exercised its rights and purchased additional stock of General Transportation and Casualty Company at $12. per share, the additional stock so acquired should be optioned to the operating companies.

Mr. Markin then recommended that the officers of Checker Cab Manufacturing Corporation be authorized in its behalf to commit the Company to furnish not exceeding $160,000. of the additional capital and surplus now required by General Transportation and Casualty Company for the conduct of its business, and to grant options on said additional stock of General Transportation and Casualty Company so acquired to Parmelee Transportation Company, or other taxicab operating companies upon terms and conditions mutually fair and acceptable to this Corporation and the Corporations receiving such options.

After consideration of the Chairman's recommendations, the following resolutions were offered, seconded and unanimously carried:

2154 RESOLVED, that the officers of this Corporation be authorized for and in behalf of this Corporation, to enter into an agreement with General Transportation and Casualty Company to purchase additional stock of said Corporation at the price of $12. per share, the total com-

mitment of this Corporation in connection with such new purchases of the stock of General Transportation and Casualty Company to be not in excess of $160,000; and be it further

RESOLVED, that the officers of this corporation in this judgment and discretion be authorized to grant to Parmelee Transportation Company, or other taxicab operating companies, options upon all or any part of the additional stock of General Transportation and Casualty Company so to be acquired upon terms and conditions fair and acceptable both to this Corporation as the grantor of said options, and to the Corporation or Corporations receiving the same.

Gov. Ex. 244 (Sept. 30, 1939, Agreement between CCM and Parmelee)

. . . the parties hereto agree as follows:

1. Parmelee hereby releases and cancels, and Checker hereby accepts such release and cancellation, a certain option contained in an agreement, dated August 9, 1938, between the parties hereto with respect to 8,100 shares of capital stock of General Transportation Casualty Company, . . .

2. Checker agrees to give and grant, and does hereby give and grant, unto Parmelee, its successors and assigns, an irrevocable option for a period beginning on the date hereof and ending at 5:00 o'clock P. M., Eastern Standard Time, on December 31, 1941, to purchase at the option price hereinafter described 9,350 shares of the capital stock of the Casualty Company now owned by Checker. Such option shall be exercised as a whole only and not in part, and upon the exercise of such option all of the shares under the option shall be taken up hereunder and shall be delivered against payment of the then current option price.

Gov. Ex. 245 (Sept. 28, 1939, Minutes of Directors Meeting of Cab Sales)

Present: George McDonald
M. M. Sokoll
Julius Jesmer

being and constituting the entire Board of Directors of the corporation.

Mr. McDonald, the President, called the meeting to order and acted as Chairman thereof, and Mr. Jesmer, the Secretary, recorded the minutes of the meeting.

2155 Thereupon, the Chairman presented to the meeting a contract between Checker Cab Manufacturing Corporation and this company, dated the 30th day of September, 1939, and stated one of the purposes of the calling of the meeting was to consider and act upon said contract, which was and is in words and figures as follows, to-wit:

MEMORANDUM OF AGREEMENT, dated the 30th day of September, 1939, between Checker Cab Manufacturing Corporation, a New Jersey corporation (hereinafter referred to as "Checker") and Cab Sales and Parts Corporation, an Illinois corporation (hereinafter referred to as "Cab Sales"),

WITNESSETH, That in consideration of the mutual covenants hereinafter contained, and of the sum of One Hundred Dollars ($100) paid by Cab Sales to Checker, the receipt whereof is hereby acknowledged, the parties hereto agree as follows:

1. Checker agrees to give and grant, and does hereby give and grant unto Cab Sales, its successors and assigns, an irrevocable option for a period beginning on the date hereof and ending at 5:00 o'clock P. M. (Eastern Standard Time) on December 31, 1941, to purchase at the option price hereinafter described 11,300 shares of the capital stock of General Transportation Casualty Company, a corporation formed under the Insurance Laws of the State of New York (hereinafter referred to as the "Casualty Company") now owned by Checker. Such option may be exercised as a whole only and not in part, and upon the exercise of such option all of the shares under the option shall be taken up hereunder and shall be delivered against payment of the then current option price.

• • •

The contract was discussed in detail, and on motion duly made and seconded, the following resolution was duly and unanimously adopted:

RESOLVED: That the President or Vice-President of this corporation be and he hereby is authorized, empowered and directed to execute and deliver to Checker Cab Manufacturing Corporation, a contract in form substantially as submitted above; . . .

The President then advised the meeting that Mr. M. Harry Freimark had applied for a loan from this company in the sum of $60,000.00 on his note, and on motion duly

made and seconded, the following resolution was duly and unanimously adopted: Be it

RESOLVED: That the officers of this corporation be and they hereby are authorized and empowered to loan to M. Harry Freimark the sum of Sixty Thousand Dollars ($60,000.00) and take his personal note therefor.

2156 *Gov. Ex. 246 (Oct. 17, 1939, Minutes of Directors Meeting of CCM)*

There were present at the meeting:

Morris Markin	Ralph E. Oakland
John H. Tuttle	Roy H. Faulkner
James A. King	R. S. Pruitt

being all of the directors of the corporation, with the exception of Mr. L. G. Miller, Mr. Morris Markin acted as Chairman and Mr. Pruitt as Secretary of the meeting.

1. The Chairman stated that he now desired to submit to the Board for approval the corporation's production program and budget for the year 1940; that the management contemplated the production of 250 taxicabs per month and the sale of said taxicabs to the operating companies in Chicago, New York City and Pittsburgh, in accordance with orders which had been obtained therefor, and which would be submitted to this meeting for approval; . . .

2. Mr. Markin next reported that although he had only requested the directors at this time to approve the 1940 program, the management, as previously explained, contemplated the continuance of the same program for the year 1941, and that the sales contract which had already been negotiated covered the major portion of the corporation's anticipated production for both years. Mr. Markin then presented for approval a sales contract with the National Transportation Co. Inc. Said contract provides that National Transportation Co. Inc. will purchase, and this Company deliver, 2,000 Checker Taxicabs without tires, at a price of $1,345. each, f.o.b. Kalamazoo, Michigan, plus any State and Federal Excise, and/or Sales Taxes, . . . Mr. Markin also produced for the consideration of the directors, similar agreements with Cab Sales and Parts Corporation covering the purchase of 800 Checker Taxicabs, . . . also, an agreement with Yellow Cab Company of Pittsburgh, covering the sale of 125 taxicabs for delivery in the months of January and February, 1940; also, an

agreement with Pittsburgh Transportation Company, covering the sale of 125 taxicabs for delivery in the months of January and February, 1940; also, an agreement with Yellow Cab Company, of Chicago, providing for the sale of 1,200 taxicabs, . . .

After consideration of the contracts referred to, the same were unanimously approved, . . .

• • •

5. Mr. Markin next stated that the corporation was the owner of 8,100 shares of the capital stock of General Transportation and Casualty Company, purchased by it from Parmelee Transportation Company in August, 1938, at a price of $17. per share, and optioned to Parmelee Transportation Company which had the right to repurchase the same, . . . that this Company also owned an additional 12,550 shares of stock of General Transportation and
2157 Casualty Company acquired in July, 1939, pursuant to subscription rights, at $12. per share, and with respect to which the management had likewise been authorized by the directors at the meeting of July 19, 1939, to grant options to the operating companies which it was ultimately contemplated would own all of the stock of General Transportation and Casualty Company; that an equitable division of the stock of General Transportation and Casualty Company now owned by this corporation, between Parmelee Transportation Company and Cab Sales and Parts Corporation would involve the granting to Parmelee Transportation Company of rights to purchase 5,100 shares of the stock of General Transportation and Casualty Company, held at a cost of $17. per share, plus 4,250 shares of the stock of said corporation held at a cost of $12. per share, and granting to Cab Sales and Parts Company of the right to purchase 3,000 shares of the stock held at a cost of $17. per share and 8,300 shares of the stock held at a cost of $12. per share; that this allocation of the options upon General Transportation and Casualty Company stock between Cab Sales and Parts Corporation and Parmelee Transportation Company was acceptable to both companies, . . .

• • •

. . . After the consideration and discussion the following resolution was offered and unanimously carried, . . .

Resolved, that the agreements between Checker Cab Manufacturing Corporation and Cab Sales and Parts Corporation and Parmelee Transportation Company,

bearing date of September 30, 1939, granting to Cab Sales and Parts Corporation and Parmelee Transportation Company options covering the purchase of certain shares of stock of General Transportation and Casualty Company owned by this corporation, shall be and said agreements are hereby ratified and approved; and be it further . . .

6. Mr. Oakland next stated that this corporation's subsidiary, Parmelee Transportation Company, had on deposit with the Commissioner of Insurance of the State of New York, approximately $50,000 . . .

Gov. Ex. 247 (Oct. 31, 1939, Letter from Oakland of CCM to Sokoll of Checker)

I am enclosing herewith Stock Certificate #1A, duly endorsed, for 6,960 shares in the General Transportation Casualty and Surety Company.

Subsequently I will forward to you a Trustee Agreement signed by Mr. Friemark, advising that this stock was purchased with your funds and that he has no interest in the Stock.

Gov. Ex. 248 (January 22, 1940, Letter from Kirkland, Fleming, Green, Martin & Ellis to Securities & Exchange Commission, with attachments)

2158 RE: CHICAGO YELLOW CAB COMPANY, INC.
FILE 2-215-2

We transmit herewith three copies of Form 8, Amendment No. 1 to Form 10-K, Annual Report of the above corporation for the year 1938, which are being filed in accordance with your deficiency memorandum of January 12, 1940.

In reference to the amendment of Item 8, the Consolidated Balance Sheet has been amended but the Balance Sheet of the Registrant has not been amended, inasmuch as the liability mentioned in your deficiency memorandum is not a liability of the registrant.

Copies of this amendment are being filed with the New York Stock Exchange and Chicago Stock Exchange concurrently.

CHICAGO YELLOW CAB COMPANY, INC. AND SUBSIDIARIES
NOTES TO FINANCIAL STATEMENTS
DECEMBER 31, 1938

2. A contract dated January 3, 1938 was entered into between the Yellow Cab Company (a Maine Corporation), Chicago, and Cab Sales and Parts Corpora-

tion and Checker Taxi Company, both of Chicago, dealing with their right to operate cabs in the city of Chicago. The contract calls for a payment of $320,000 by Yellow Cab Company to Checker Taxi Company made up of a down payment of $45,000 on execution of the contract and the balance in quarterly installments of $13,750, beginning on the first day of April 1938 and ending on January 1, 1943. These installments are payable in cash or at the option of the Yellow Cab Company in the collateral trust notes of Cab Sales and Parts Corporation at par and accrued interest, all of which ($488,750 par value) are at present owned by Chicago Yellow Cab Company, Inc. and subsidiaries. These notes as secured by pledge of substantially all of the outstanding capital of Checker Taxi Company wholly owned by Cab Sales and Parts Corporation. Yellow Cab Company has agreed to cause the maturity date of the notes to be extended to April 1, 1943 and the interest rate to be reduced from 4% to 3% per annum from January 1, 1938 . . .

* * *

During the year a new company, namely General Transportation Casualty Company (New York corporation), New York City, has been organized for the purpose, among other things, of insuring taxicab companies against personal injury and property damage claims. It has a paid-in capital of $500,000, the subscribing stockholders being Chicago Yellow Cab Company, Inc. 49.8%, Cab Sales and Parts Corporation, Chicago 23.2% and Checker Cab Manufacturing Corporation 27%. On March 1, 1939 this Casualty Company took over this insurance for Yellow Cab Company formerly underwritten by Yellow Cab
2159 Mutual Insurance Company, which company it is proposed to liquidate after all claims arising out of accidents prior to March 1, 1939 have been satisfied.

4. Also in the year 1938, a new company, namely, Transportation Maintenance Corporation, Chicago, has been organized for the purpose of repairing and maining principally the fleets of Yellow Cab Company, Chicago, Checker Taxi Company, Chicago, and Parmelee Transportation Company in Chicago, their respective interests in the new company being 49% Chicago Yellow Cab Company, Inc.; 40% Checker

Taxi Company; and 11% Parmelee Transportation Company, of the capital stock of 500 shares of $100 par value. The company began operations on May 1, 1938 and from that date has served the Yellow Cab Company in maintaining and repairing its taxicab fleet.

Gov. Ex. 250 (Oct. 31, 1941, Memorandum from S. P. G. Fuller re Casualty Company)

The option granted by Checker to Parmelee on 9,180 shares of the capital stock of the above company expires December 31, 1941. The Board of Directors at their meeting held on October 18, 1941, determined that the cash position of Parmelee was such as to make it impossible to permit Parmelee to exercise the option at this time. However, I tentatively discussed with both Mr. Markin and Mr. Oakland, the desirability from Parmelee's point of view, of having the option extended for another year. Both Mr. Markin and Mr. Oakland took the position that they had already extended the option once and that unless Parmelee paid a substantial consideration, they felt that they would be delinquent in their duty to the Checker stockholders in consenting to a further extension of the option, particularly in view of the fact that the option would have to be fully reported on the various S. E. C. reports that Checker and Parmelee would file. Mr. Markin further stated that he did not feel that Parmelee would be in a financial position sufficient to take up the option for some years to come, in view of increased costs of doing business, and that any extra cash that Parmelee had
2160 should be applied to the retirement of its outstanding debentures, which are selling at a substantial discount.

I reported to Mr. Wyatt that it seemed impossible to get an extension and that the matter might as well be abandoned.

Gov. Ex. 251 (March 23, 1944, Minutes of Directors Meeting of Chicago Yellow)

Upon motion of Mr. Wyatt, duly seconded by Mr. Samuels, the following preambles and resolution were unanimously adopted:

WHEREAS this company is the owner of 27,390 shares (being 49.8%) out of a total of 55,000 outstanding shares of the capital stock of General Transportation Casualty & Surety Company; and

WHEREAS the business of General Transportation Casualty & Surety Company has increased to an extent that it is necessary for such company to either reinsure some of the risks assumed by it or to obtain additional capital in order to avoid such reinsuring;

* * *

NOW THEREFORE, BE IT RESOLVED that this company approve the issuance by General Transportation Casualty & Surety Company of 25,000 additional shares of its stock at the price of $23.00 per share as above outlined, and that this company be and it is hereby authorized and directed to acquire 8,610 of such shares at a total cost to this company of $198,030.00.

Gov. Ex. 252 (March 23, 1944, Minutes of Directors Meeting of CCM)

There were present at the meeting:

Morris Markin	J. A. King
Ralph E. Oakland	H. C. Snow

being all of the directors of the corporation with the exception of Mr. R. S. Pruitt, who was unable to attend the meeting, but had previously waived notice of the same.

Mr. Morris Markin, President of the corporation, acted as Chairman, and Mr. R. E. Oakland, Vice President and Treasurer of the corporation, in the absence of Mr. R. S. Pruitt, Secretary of the corporation, recorded the minutes.

Mr. Markin stated that the officers of the corporation had recently purchased for the account of the corporation an additional 3,350 shares of the stock of General Transportation Casualty and Surety Company at a cost of $77,050, and that it would be in order at this time for the Board of Directors to ratify and approve the action of the officers in making this investment for the corporation. Thereupon, upon motion offered and unanimously carried, the following resolution was adopted:

2161 BE IT RESOLVED that the action of the officers of Checker Cab Manufacturing Corporation in purchasing an additional 3,350 shares of the capital stock of General Transportation Casualty and Surety Company at a cost of $77,050, shall be and the same is in all respects ratified, approved and confirmed.

Gov. Ex. 253 (March 30, 1944, Letter from Wyatt, Treasurer to Parmelee to C. P. G. Fuller)

We should include as one of the items to be approved at the next meeting of the Board of Directors, the purchase on

March 23rd of 8,000 shares, General Transportation Casualty & Surety Company, at a price of $23.00 a share, the total being $184,000.

To date, the certificate has not been received but probably will be in due time.

Gov. Ex. 254 (Plaintiff's Interrogatory No. 26)

To all defendants. With respect to your denial of certain allegations of paragraph 47 of the amended complaint, state:

(a) The name of the company or companies that have insured your operations against personal injury and property damage claims each year from 1935 to 1946, inclusive;

(b) The date of each acquisition by you, and your wholly owned subsidiaries, directly and indirectly, of capital stock of General Transportation Casualty Company, the amount of stock acquired by each acquisition, the name of the seller, and the consideration paid.

Gov. Ex. 255 (CCM's answer to plaintiff's interrogatory No. 26)

26 (b)

Date	*No. of Shares*	*Buyer*	*Seller*
Aug. 9, 1938	8,100	CCM	Parmelee
July 15, 1939	12,550	CCM	Parmelee
April 1, 1944	3,350	CCM	Parmelee
Sept. 23, 1946	24,000	Parmelee	CCM

The consideration paid for each of the above purchases of stock was cash.

Gov. Ex. 256 (Markin's answer to plaintiff's interrogatory No. 26)

26: (a) and (b) None

Gov. Ex. 257 (Parmelee's answer to plaintiff's interrogatory No. 26)

(a) Parmelee Transportation Company was self
2162 insurer on primary insurance from 1935 to July 1, 1941. General Transportation Casualty and Surety Company covered primary insurance from July 1, 1941 through 1946. Zurich General Accident and Liability Insurance Co. Ltd. covered excess insurance from 1935 to 1946, inclusive.

(b) Parmelee Transportation Company acquired, for cash, shares of the $10 par value capital stock of the General Transportation Casualty Company, which changed its name to General Transportation Casualty and Surety Company, as follows:

On March 15, 1938 Parmelee subscribed to and acquired 8,100 shares. Subsequently, on August 9, 1938, Parmelee sold such stock to Checker Cab Manufacturing Corporation.

On April 6, 1944 Parmelee subscribed to and acquired by way of an original subscription 8,000 shares.

On September 26, 1946 Parmelee purchased 24,000 shares from Checker Cab Manufacturing Corporation.

On April 21, 1947 Parmelee subscribed to and acquired 8,000 shares.

The dates of acquisition aforesaid are the dates of stock issuance.

Gov. Ex. 258 (Chicago Yellow's answer to plaintiff's interrogatory No. 26)

26 (a). None.

26 (b).

Date of Acquisition	*Amount of Stock*	*Seller*
1938	14,940 Shares	Issuer
1939	39,450 "	"
1944	8,610 "	"
1947	9,000 "	"

Cash was paid for each of the above purchases.

Gov. Ex. 259 (Yellow's answer to plaintiff's interrogatory No. 26)

Interrogatory 26:

26 (a).

Year	*Name of Insurer*
1935	Yellow Cab Mutual Insurance Co.
1936	Yellow Cab Mutual Insurance Co.
1937	Yellow Cab Mutual Insurance Co.
1938	Yellow Cab Mutual Insurance Co.
Year	*Name of Insurer*
1939	General Transportation Casualty & Surety Co.
1940	"
1941	"
1942	"
1943	"
1944	"

2163

Year	*Name of Insurer*
1945	General Transportation Casualty & Surety Co.
1946	

26 (b). None.

Gov. Ex. 260 (Cab Sales' answer to plaintiff's interrogatory No. 26)

26. (a) Lake Shore Mutual Insurance Co. from 1935 through February 28, 1939. General Transportation Casualty and Surety Company from March 1, 1939 through 1946.

(b)

Date	*No. of Shares*	*Buyer*	*Seller*
March 15, 1938	6,900	Cab Sales	Original Issue
April 1, 1944	5,040	Cab Sales	Original Issue
April 1, 1947	3,000	Cab Sales	Original Issue

Gov. Ex. 261 (Checker's answer to plaintiff's interrogatory No. 26)

26. (b) None

Gov. Ex. 262 (Oct. 25, 1939, Letter from Rank to Wyatt)

I am enclosing herewith check of Cab Sales & Parts Corporation in the amount of $5,500.00 covering the agreed purchase price of 55 shares of the stock of the Transportation Maintenance Corporation.

It is my understanding that Cab Sales & Parts Corporation desires you to remain as nominee and would like the usual letter disclaiming interest.

Gov. Ex. 263 (Nov. 8, 1939, Letter from Wyatt to Sokoll of Cab Sales, with attachment)

I am enclosing Certificate No. 3 covering fifty-five (55) shares of the common stock of Transportation Maintenance Corporation; together with a letter disclaiming any personal interest in said stock.

KNOW ALL MEN BY THESE PRESENTS: That I, R. J. Wyatt, as the representative, trustee and nominee of Parmelee Transportation Company, a Delaware corporation, of Wilmington, Delaware, have purchased with funds supplied by said Parmelee Transportation Company, Fifty-five (55) shares of the common stock of Transportation Maintenance Corporation, an Illinois corporation, said stock being represented by Certificate No. 3.

2164 I hereby represent, warrant and agree that I have no interest in said certificate or the shares of stock represented thereby, the same being held of record in my name for the purpose of convenience, and I hereby declare myself trustee of said shares and certificate representing the same for the benefit of said Parmelee Transportation Company, its successors, legal representatives and assigns.

Gov. Ex. 264 (Plaintiff's interrogatory No. 27)

To Yellow, Parmelee, Cab Sales, and Checker. With respect to your denial of certain allegations of paragraph 48 of the amended complaint, state:

(a) The consideration paid by you each year from 1938 to 1946, inclusive, to Transportation Maintenance Corporation for the repair and maintenance of motor vehicles;

(b) The consideration paid by you to companies other than Transportation Maintenance Corporation each

year from 1935 to 1946, inclusive, for the purpose of repair and maintenance of motor vehicles, stating how much was paid to companies affiliated with you, naming those companies, and stating how much was paid to companies not affiliated with you.

Gov. Ex. 265 (Yellow's answer to plaintiff's interrogatory No. 27)

Interrogatory 27: During the period April 30, 1938 to 1946, inclusive, all taxicabs repair and maintenance services were performed by Transportation Maintenance Corporation. *27(b).* During the period 1935 to April 30, 1938 Yellow Cab Company performed its own repair and maintenance services.

Gov. Ex. 266 (Cab Sales' answer to plaintiff's interrogatory No. 27)

27. (a) and (b) During the period 1935—April 30, 1938, Cab Sales performed its own taxicab repair and maintenance services and paid no sums to others for repair or maintenance of taxicabs. During the period May 1, 1938—1946, all taxicab repair and maintenance services for Cab Sales were performed by Transportation Maintenance Corporation, except as indicated in the next sentence, and all payments for repair and maintenance of taxicabs were made by Cab Sales to Transportation Corporation. During 1946 Cab Sales additionally paid to non-affiliated companies, for repair and maintenance of taxicabs, the sum of $13,889.46.

Gov. Ex. 267 (Checker's answer to plaintiff's interrogatory No. 27)

27. (a) and (b). None

2165 *Gov. Ex. 268 (Parmelee's answer to plaintiff's interrogatory No. 27)*

(a) Consideration paid by Parmelee Transportation Company each year from 1938 to 1946, inclusive, to Transportation Maintenance Corporation for the repair and maintenance of motor vehicles and for replacement parts and supplies was as follows:

1938	$ 3,277.07	1943	$ 571.55
1939	13,496.99	1944	848.89
1940	17,281.09	1945	5,105.11
1941	13,028.50	1946	6,714.44
1942	2,126.14		

Payments from May 1938 to July 1, 1941 represent consideration paid for repair and maintenance of motor vehicles. Subsequent payments were for automative replacement parts and supplies.

(b) Consideration was paid by Parmelee Transportation Company to affiliated companies other than Transportation Maintenance Corporation each year from 1935 to 1946, inclusive, for the repair and maintenance of motor vehicles and for replacement parts and supplies, was as follows:

Year	Checker Cab Manufacturing Corporation	Cab Service & Parts Corporation	Yellow Cab Company (Chicago)	Yellow Cab Company of Pittsburgh
1935			$10,504.22	
1936			11,310.07	
1937			12,319.39	
1938			4,448.85	
1939	$ 187.06	$ 172.25	—	
1940			1.90	

Year	Checker Cab Manufacturing Corporation	Cab Service & Parts Corporation	Yellow Cab Company (Chicago)	Yellow Cab Company of Pittsburgh
1941	—	$ 1,026.10	—	
1942	$ 6,000.00(1)	7,262.31	—	
1943	5,827.44(2)	16,522.39(3)	$ 679.78	
1944	6,116.72(A)	11,414.66(4)	—	
1945	24,024.27(A)	10,653.52(5)	—	$ 8.55
1946	7,058.42(A)	12,713.88(6)	—	—

(1) Service fee—1942—$6,000
(2) Service fee—1943—$3,000—1st 6 months
(3) Service fee—1943—$3,000—2nd 6 months
(4) Service fee—1944—$6,000
(5) Service fee—1945—$6,000
(6) Service fee—1946—$6,000

2166 (A) In 1944, $37,020.91 was paid to Checker Cab Manufacturing Corporation for rebuilding trucks and coaches. This sum was written off to maintenance expense in the following periods and so included in the above figures

1944	$ 6,116.72
1945	23,845.77
1946	7,058.42

Consideration paid by Parmelee Transportation to companies not affiliated with it each year from 1935 to 1946, inclusive, for the repair and maintenance of motor vehicles and for replacement parts and supplies, was as follows:

1935	$ 3,114.23	1941	$ 5,240.17
1936	2,560.86	1942	11,629.65
1937	3,896.04	1943	20,543.08
1938	2,357.69	1944	20,195.72
1939	380.50	1945	33,419.91
1940	730.22	1946	50,731.44

Gov. Ex. 269 (April 1, 1938, Minutes of Directors Meeting of Chicago Yellow)

The chairman stated that in addition to the sum of $250,000.00 which, by resolutions adopted at this meeting, had been authorized to be invested in stocks, this corporation had other available funds to loan, and that Checker Cab Manufacturing Corporation had proposed that it borrow from this corporation $366,000.00, payable $46,000.00 on April 30, 1938, and $40,000.00 on the last day of each month thereafter until said loan had been paid, with interest at 5% per annum, payable monthly on the balance of principal from time to time remaining unpaid, and to secure the payment of said loan by the pledge of installment purchase notes in the aggregate principal amount of $608,000.00 secured by conditional sales contracts upon 1619 automobiles manufactured and sold by Checker Cab Manufacturing Corporation. Following a discussion of the proposed loan, it was, upon motion duly made, seconded and carried,

RESOLVED that this corporation loan to Checker Cab Manufacturing Corporation the sum of $366,000.00, to be evidenced by its note or notes dated April 5, 1938, payable as to principal in the amount of $46,000.00 on April 30, 1938, and $40,000.00 on the last day of each
2167 month thereafter until said loan has been fully paid, with interest at 5% per annum, payable concurrently with such principal payments upon the balance of principal remaining from time to time unpaid.

FURTHER RESOLVED that this corporation accept as security for the payment of said loan to Checker Cab Manufacturing Corporation the pledge of not less than $608,000.00 in aggregate principal amount of installment purchase obligations signed by purchasers, in good standing, in respect of 1619 taxicabs or automobiles and secured by valid conditional sales contracts upon said automobiles or taxicabs.

Gov. Ex. 270 (Dec. 17, 1938, Letter from Bieze Treasurer of Chicago Yellow, to Oakland, V. P. of CCM, with attachment)

Answering your letter of December 15, 1938, we herewith acknowledge receipt of $40,088.89, covering final payment on your note executed April 5, 1938, in the sum of $366,000.00 and which note we are herewith returning to you marked "Paid".

We are also returning to you the collateral and notes which were turned over to us as per schedule marked "Schedule of National Transportation Co., Notes Held as Collateral on Checker Cab Mfg. Corp., Note of $366,000.00" showing an aggregate total principal amount of notes in the sum of $1,821,375.00 covering 1619 cabs upon which there was at that time due according to that schedule, a balance of $608,625.00.

Gov. Ex. 271 (Dec. 31, 1938, Agreement of CCM)

In consideration of One ($1.00) Dollar in hand paid, the receipt whereof is hereby irrevocably acknowledged and for other good and valuable consideration, the undersigned, Checker Cab Manufacturing Corporation, a New Jersey Corporation, does hereby agree that in the event six (6) certain notes, amounting to a total sum of Four Hundred Thousand ($400,000.00) Dollars, which have this day been purchased by Chicago Yellow Cab Company, Inc. from Checker Cab Manufacturing Corporation, are, or any of them, or any part of said notes, unpaid by those parties which have signed said notes or endorsed said notes, as the said notes become due and payable to Chicago Yellow Cab Company, Inc., then the said Checker Cab Manufacturing Corporation will, upon demand, repurchase all of the unpaid notes, or portions, thereof, at face value.

The above notes referred to each have been executed by National Transportation Company, Inc. dated at New York, December 30, 1938, . . .

2168 *Gov. Ex. 272 (June 18, 1943, Letter from Samuels of Chicago Yellow, to Albert L. Marks)*

My attention has been called to the fact that when you sent in your proxy, in connection with the Annual Meeting of our corporation, you wrote an inquiry asking for certain information in connection with the contract of the Parmelee Transportation Co.

Our contract with the Parmelee Transportation Co. is what is commonly known and described as a management contract. In the good old days, when Mr. Hertz was the Chairman of our Board, he was paid $100,000.00 for his services as an advisor in the operation of this company.

The Parmelee Transportation Co. owns 27% of all outstanding capital stock of our company and furnishes us with special information along the following lines.

Mr. Sinnott, one of our Directors, gives us the benefit of his experience in the practical operation of taxicab companies because the Parmelee Co. is actively engaged in a number of taxicab operations in several large cities.

Mr. Wyatt, also one of our Board members, is constantly advising us with reference to many financial phases of our operation.

Mr. Walter Laird, who is one of the Directors of Parmelee, and also one of the Directors of the Yellow Cab Company, our operating subsidiary, is constantly in touch with our operation, particularly in the matter of arranging for our gasoline contracts, which is his particular field, not only for us but for Parmelee as well and all of its subsidiaries.

Mr. King, another member of the Parmelee organization, is in charge of the matter of mechanical condition of our equipment.

In addition thereto, all of these men serve individually in their respective positions on our Boards without compensation, and the Parmelee Co. pays all of their expense in connection with the attendance at our meetings.

I hope that this will give you a bird's-eye view of the Parmelee Transportation Co., in connection with our operation.

It should also be called to your attention that when we first negotiated the management contract, we were paying Parmelee an annual fee of $75,000.00 per year. This has been steadily reduced until now it is $36,000.00 per year.

We regard the services rendered by Parmelee of immense value and worth considerably more. One of the most direct benefits is that Parmelee advises us daily of various items that enter into the cost of operation, so that we receive information daily so that we may check all of the elements in our operation.

2169 *Gov. Ex. 273 (July 29, 1938, Letter from Oakland to Markin)*

I have gone over the memorandum from Mr. Greene to Mr. Samuels regarding the proposed organization of Yellow Cab Company of Chicago.

I do not see any particular advantage in the Operating Company leasing the cabs instead of owning them, as there could be a good deal of argument regarding the rate charged for rental.

I would much prefer that the Operating Company be capitalized for a small amount, that is only sufficient to cover the present operating equipment, and they would then be unable to finance new cabs themselves and would have to borrow the money from the Parent Company. This could be done under a mortgage, and they then pay interest on the amount that is necessary to borrow. I do not see where any reasonable objection could be made for the borrowing of money and paying interest to purchase new equipment.

In line with the above and with Mr. Greene's suggestion, I believe that Corporation A should be organized which would take over all of the real estate now owned by Yellow Cab Company. Corporation B should be organized (named Yellow Cab Company) and would take over a ll of the operating equipment. The present Yellow Cab Company would then be liquidated into Chicago Yellow Cab Company. The liquidation of this subsidiary would be tax free. Under this plan, the Chicago Yellow Cab Company would have all of the cash which is now in Yellow Cab Company and would own the stock of A Corporation (the Realty Corporation) and the stock of B Corporation (Yellow Cab Company, the Operating Company).

In this reorganization, it might be advisable to write off the good-will which is now shown on the consolidated balance sheet in the amount of $1,031,653.81, as I do not see that this account serves any useful purpose.

The Realty Company may be formed immediately, but I believe the formation of the new Operating Company should be deferred until December 31st, 1938. The old company would continue to operate under its present licenses until they expired, and the new company would apply for the 1939 licenses. By deferring this until December 31st the operating equipment of the Yellow Cab Company will be almost fully depreciated so that they will have a very limited capitalization and will have to borrow a very substantial amount from the Parent Company for the purchase of new cabs.

No income taxes would be involved in any of the above transactions.

Gov. Ex. 274 (August 1, 1941, Letter from Markin to Samuels, President Chicago Yellow)

In going over your June Statement I notice that the parent company, of which you are President, shows an approximate loss of $450.

2170 I doubt if you could convince the stockholders that it is good management for a company with over a million dollars in cash, always on hand, to lose money.

I therefore suggest that you examine Schedule A—Investments in the balance sheet of your company and you will find there is very little outside investment and the only income your company is getting is from subsidiaries. At one time, as I recall, the Board of Directors approved the suggestion to invest $250,000 in outside securities.

I wish you would give this matter a little thought and consult the Treasurer of your company, Mr. Bieze, with the idea of recommending to the Board, at the next meeting, the purchase of some good securities or any other good investments.

Gov. Ex. 275 (Oct. 15, 1941, Letter from Wyatt, Treasurer of Parmelee, to Bieze, Treasurer Yellow Cab).

In connection with the Capital Stock Tax Reports, to be filed on or before the end of this month, we agree on the following values:

Chicago Yellow Cab Company.....$1,000,000.
Yellow Cab Company, Chicago.....$7,500,000.

My understanding of your recommendation for Benzoline and Utilities is on the basis of $500,000. each, and you write further of the possibility of the merger of these two companies. If the merger is to be completed prior to January 1, 1942, our recommendation would be to declare a capital stock for Benzoline of $150,000. and for Utilities of $500,000. or $600,000. The $150,000. recommended on Benzoline seems to be sufficient on the basis of their present earnings, and the $500,000. or $600,000. for Utilities is based on the thought that Benzoline would be merged with Utilities, and Utilities would continue in business. In this connection we are convinced that upon the merger of the two companies, the continuing company's declaration would be the only one remaining effective, subject however, to all the necessary statutory adjustments. In other words, the original declared value of the merged corporation does not, by reason of the merger, become added to the original or adjusted declared value of the continuing corporation.

Gov. Ex. 276 (Dec. 14, 1939, letter from Bieze of Yellow, to Rank, President of Parmelee).

I am attaching herewith corrected copy of memo of matters to be taken up at the Yellow Cab Company board

meeting next Thursday. Would you be good enough to substitute this sheet for the sheet that was given to you yesterday.

2171 *Gov. Ex. 277 (Dec. 14, 1939, Letter Bieze to Rank, with attachments)*

With further reference to discussion of dividends had yesterday afternoon and last evening, I wish to call the following to your attention.

• • •

Therefore, I would suggest that Yellow Cab Company pay to Chicago Yellow Cab Company, Inc., as dividends, $234,500.00 or $35.00 per share on 6700 shares. This $234,500.00 plus dividends of $23,000.00 to be received from the Utilities Motor Fuel Co., Inc.; Benzoline Motor Fuel Company, $4,500.00; Transportation Maintenance Corporation $40,000.00; and Hertz Drivurself Company, $7,668.50, will total $309,668.50

Gov. Ex. 278 (Dec. 19, 1945, Letter Bieze to Markin)

As you know, on Thursday, December 20, 1945, we are holding Board of Directors Meetings for all of the companies, which will be the last meetings this year.

The subsidiary companies will declare dividends to the parent company and the amounts of each company were approved by Mr. Oakland. The Yellow Cab Board will authorize the officers to purchase the garage at 7920 Greenwood Ave. at a price not to exceed $32,500.00.

Utilities Motor Fuel Co. Inc. and Benzoline Motor Fuel Co. Boards will approve the action of the signing of the Texas Co. gasoline contracts.

If there are any other matters you wish to be taken up, will you be good enough to call us.

Gov. Ex. 279 (June 28, 1930, Letter E. S. Higgins, V. P. of TMC, to Samuels of Yellow)

With reference to the request of Mr. Jaeckel for your stock ownership, etc. which was O. K., I want to thank you for bringing it to our attention before answering. In these times it is particularly necessary to be careful how information is given out and I am trying to get our friends to forward their requests through this office.

I wish that you would pass a word of warning about among the Chicago officials to furnish information only when requested by us here. If requests are made, send

us the answers and we will see that they are properly attended to.

Gov. Ex. 280 (July 19, 1933, Letter from T. V. Hogan to Morris Markin with handwritten notation)

As per our telephone conversation of today, I am
2172 submitting herewith the following statistics with reference to the new rates of fare.

[Handwritten notation] Thought you might want a copy of letter to the Boss.

Gov. Ex. 281 (Jan. 16, 1941, Letter Bieze to Oakland of CCM)

I am attaching herewith copy of Agreement between The Texas Company and Utilities Motor Fuel Co., Inc., for gasoline, copy of Agreement between The Texas Company and Benzoline Motor Fuel Co., for gasoline and copy of Agreement between The Texas Company and Benzoline Motor Fuel Co., for lubricating oils.

The above stated Agreements are dated November 9, 1940 and are for a period of one year from November 10, 1940 to November 9, 1941, with the provision that either party may cancel at expiration on thirty days prior written notice to the other.

Gov. Ex. 282 (June 8, 1944, Letter from Oakland, V. P. of CCM, to Bieze, V. P. of Yellow)

Will you please send me a resume of the gasoline contract between Standard Oil Company of Indiana and Utilities Motor Fuel Co., Inc. dated November 10, 1943.

Also please enclose a schedule showing the detailed computation of the cost to cab companies.

Gov. Ex. 283 (June 21, 1944, Letter Bieze to Oakland, with attachments)

As per your letter of June 8, 1944, we are enclosing herewith resume of our gasoline contract.

You will note we are enclosing herewith two copies of each showing the structure of Standard Red Crown Gasoline and Standard Blue Crown Gasoline.

Since January both cab companies have been using the Standard Red Crown Gasoline exclusively.

We did not include in the enclosed figures the 3% Federal Transportation Tax billed by and paid to Sprout and Davis, Inc., which averages $.000798 per gallon. This 3% charge is based on the amount that Utilities Motor Fuel

Co., Inc., paid to Sprout and Davis, Inc., for hauling the gasoline from Whiting, Indiana, to the various garages of the two cab companies in Chicago. This additional tax is absorbed by Utilities Motor Fuel Co., Inc., and which in turn slightly reduces the brokerage of .003125 to Utilities Motor Fuel Co., Inc.

Gov. Ex. 284 (April 25, 1940, Memorandum from Rank to Markin)

The weekly report of revenue of the Yellow Cab Company for the first time in a number of months bears the notation

2173 "THE ABOVE FIGURES ARE SOME STATISTICS TAKEN FROM THE OPERATION SHEET WEEK ENDED APRIL 20, 1940.

THOS. B. HOGAN,"

This report is a regular weekly report compiled by the treasurer's office and is not as Mr. Hogan's comment indicates: an incidental memorandum of possible interest.

This report has been regularly and consistently issued weekly for some time and reflects the work of the garage managers and is the basis of the competitive spirit which we have been trying to create among them.

In my opinion the notation will serve to minimize the value of this report and Mr. Hogan's name thereon will serve to lower the morale of the garage managers and undermine the very thing which we are trying to accomplish. [Handwritten notation] Have written to Hogan direct at MM's suggestion L. R. 4-25-40.

Gov. Ex. 285 (April 26, 1940, Letter from Rank to Hogan, President of Yellow)

The weekly report of revenue of the Yellow Cab Company came to my desk yesterday bearing the notation: "The above figures are some statistics taken from the operation sheet week ended April 20, 1940.—Thos. B. Hogan."

I do not know the purpose of this notation but it seems to me that its addition to a regular report will be interpreted by the recipients as having some significance. In my opinion it serves to minimize the value of the report by indicating that it is a memorandum of possible interest whereas the report actually reflects the ability of the several garage managers and is the basis of the competitive spirit which we have been endeavoring to create among them.

I wish you would give this matter some thought as I know that you have no desire to handicap our efforts to build an aggressive and sound organization in the operating department of the Yellow Cab Company.

Gov. Ex. 286 (March 11, 1941, Letter from Rank to Bieze)

I am asking Mr. Stouffer to come to New York on or about April 2nd to check up on anything that may be new in the operating procedure in that city. I would thank you to provide Mr. Stouffer with the funds necessary for making this trip.

Gov. Ex. 287 (May 7, 1940, Letter from Oakland, of CCM, to Bieze of Yellow)

As per your request, I am enclosing herewith form used by Chicago Taxi Company for an analysis of their 2174 claim reserve. It is my suggestion that you follow this form and include it in your monthly statements beginning in April, 1940.

You advised me yesterday that you could, without much trouble, ascertain the amount of excess claims paid, allocated as between the various years, and so I suggest that we go back four or five years so that we may have a comparison of the costs in excess of the statutory requirements.

Gov. Ex. 288 (June 6, 1940, Letter from Oakland to Bieze)

When I was last in Chicago I requested that you send me a detailed analysis of the claim expense for the year ended April 30th, 1939 and the year ended April 30th, 1940.

I would appreciate it very much if you could arrange to send this to me in the near future, as I now have all the figures except yours.

Gov. Ex. 289 (June 10, 1940, Letter from Bieze to Oakland)

As requested in your letter of June 6, 1940, we are attaching herewith two copies of detailed analysis of the Claim expense for the year ended April 30, 1939 and the year ended April 30, 1940.

Gov. Ex. 290 (September 19, 1933, Letter from Markin to Samuels of Yellow)

Please accept this letter as formal confirmation of the recommendation made by me on behalf of The Transportation Management Corporation on the occasion of my last visit to Chicago; namely, that the salaries of the executive officers of the Yellow Cab Company be restored to the

amount paid prior to the reduction in such salaries on October 1, 1931. It is my understanding that should you put this recommendation into effect, starting September 1, 1933, Mr. Hogan, President, will be compensated at the rate of $24,000 per annum and that Mr. Samuels, Vice President, will also be compensated at the rate of $24,000 per annum.

This will also serve to confirm my verbal recommendation on behalf of The Transportation Management Corporation that effective September 1, 1933 the salary paid to Mr. R. H. Bieze, Treasurer, be increased to the rate of $10,000 per annum.

This is in accordance with the understanding had with Messrs. Hogan and Samuels at the time of the reduction of October 1, 1931 to the effect that their compensation should be restored as recommended above just as soon as improvement in business warranted such action. I am of the opinion that the earnings of the Yellow Cab Company and its prospects for continuing such earnings warrant this action at this time.

2175 *Gov. Ex. 291 (August 24, 1939, Letter from Rank to Hogan and Bieze of Yellow)*

I have authorized Mr. Stouffer to fix a minimum wage of Assistant Superintendents of $30.00 per six-day week. It is not intended to make a blanket adjustment of the Assistant Superintendents' wages to this figure but rather to fix a minimum standard for men who qualify and show their ability to meet the increased responsibilities placed upon them in connection with the new washing and dispatching program.

Gov. Ex. 292 (March 15, 1940, Letter from Rank to Hogan and Bieze)

I regret to inform you that it is going to be necessary to dispense with the services of Mr. Prince as he has given no indication of having the ability to carry out the duties and responsibilities of night superintendent. In your absence I have authorized Mr. Stouffer to tell Mr. Prince that the company will allow him two months' pay, as has been usual in such cases.

I have also authorized Mr. Stouffer, when and as he sees fit, to increase Mr. Coyle from $50.00 to $60.00 per week. Since Mr. Prince has been acting as night superintendent Mr. Coyle has taken over the duties of Employment Manager in addition to those of Traffic Manager and has done an excellent job to date.

Gov. Ex. 293 (November 19, 1945, Letter from Bieze to Markin)

At a meeting, discussions took place as to compensation for various employees and it was recommended that consideration be given to the following rates of compensation:

	Present Rate	Recommended Rate
*Day Superintendents	$69.00	$75.00
Night Superintendents	46.00 to 49.00	60.00
Cashiers	42.50	45.00
Washers	35.00	35.00
Road Superintendents	41.00	60.00
Telephone Operators	29.70	29.70
Comptometer Operators	30.00 to 32.50	35.00
Addressograph Operator	32.50	35.00

* Three day superintendents now receiving $80.50 per week. No change to be made on same.

If these recommended rates of compensation meet with your approval, may we have your approval on same.

2176 *Gov. Ex. 294 (November 20, 1945, Letter from Markin to Bieze.)*

I approve the proposed increases shown in your letter of November 19, 1945.

Gov. Ex. 295 (November 27, 1941, Letter from Oakland to Bieze.)

Some time ago you furnished me with a list of employees earning $200 a month or more for Mr. Markin's use.

In addition to the information previously furnished, I would like to have the date of employment and sex of these employees.

Mr. Markin is in a rush to get this information, and I will appreciate it if you will give this your immediate attention.

Gov. Ex. 296 (November 30, 1945, Letter from Oakland to Sokoll of Cab Sales) [Handwritten notations on letter omitted here]

Mr. Markin has authorized the following contributions for Yellow Cab Company:

Church Federation of Greater Chicago	1944	$3,500.00
	1945	2,000.00
The Jewish Charities of Chicago	1944	3,500.00
	1945	2,000.00
The Catholic Charities of the Archdiocese of Chicago	1944	3,500.00
	1945	2,000.00
Chicago Urban League	1944	1,000.00
	1945	500.00
South Side Boys' Club	1944	250.00
	1945	250.00
South Side Settlement House	1944	250.00
	1945	250.00

On the Service Men's Centers he has tentatively agreed on the same basis as last year, but this is subject to change after he meets the interested parties. Will you please make a corresponding reduction for these same charities this year.

2177 *Gov. Ex. 297 (April 23, 1929, Minutes of First Directors Meeting of Automotive Sales Corporation—)*

Present: Emil A. Dannemann
Victor Donohue
Samuel Preston

being all of the Board of Directors.

Mr. Emil A. Dannemann was chosen Chairman and Mr. Victor Donohue was chosen Secretary of the meeting and kept the minutes thereof.

• • •

The Chairman then presented to the meeting a form of sales contract prepared to be entered into by this Corporation and Checker Cab Manufacturing Corporation of Kalamazoo, Michigan, for the consideration of the meeting.

After full consideration of the terms and provisions of the form of sales contract presented to the meeting, the following resolutions were, upon motion duly made and seconded, unanimously adopted:

RESOLVED that the form of sales contract to be entered into by this Corporation and Checker Cab Manufacturing Corporation, presented to this meeting, and the terms and provisions contained therein, be and the same hereby is in all respects approved, . . .

• • •

Mr. Ernest H. Miller, then appeared before the meeting and stated that he was President of Parmelee Transportation Company, a Delaware corporation, and that he was authorized, on behalf of said Company, to offer to purchase from this Corporation 1,000 shares without par value of its capital stock for the sum of $1,000 in cash, said shares to include the shares originally subscribed for by the incorporators of this Corporation, the subscriptions for which had already been transferred to Parmelee Transportation Company.

Upon motion duly made and seconded the following resolutions were unanimously adopted:

2178 RESOLVED that the offer made to this Corporation on behalf of Parmelee Transportation Company, a Delaware corporation, by Mr. Ernest H. Miller, its Presi-

dent, to purchase 1,000 shares without par value of the capital stock of this Corporation for the sum of $1,000 in cash, be and the same hereby is accepted and that this Corporation, upon payment to it of the sum of $1,000 in cash by Parmelee Transportation Company, issue to or upon the order of said Company, 1,000 shares without par value of its capital stock (said shares to include the shares originally subscribed for by the incorporators of this Corporation, the subscriptions for which having already been transferred to said Company);

Gov. Ex. 298 (April 1929, Agreement between CCM and Automotive—)

AGREEMENT, made this .... day of April, 1929, between CHECKER CAB MANUFACTURING CORPORATION, a New Jersey corporation, party of the first part (hereinafter referred to as "Checker"), and AUTOMOTIVE SALES CORPORATION, a Delaware corporation, party of the second part, (hereinafter referred to as "Sales Corporation"),

WITNESSETH:

Sales Corporation is engaged in the business of dealing in taxicabs and other motor vehicles, as principal or broker. Checker is engaged in the manufacture and sale of taxicabs and is, or expects to be, engaged in the manufacture and sale of other motor vehicles.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and for other good and valuable consideration, the parties hereto agree as follows:

I. Sales Corporation agrees to use its best efforts to promote the sale of the products of Checker.

II. All orders procured by or through Sales Corporation for Checker, shall be for cash or on such terms as to credit as shall from time to time be approved by Checker, and in each case the credit risk shall be subject to the approval of Checker. Checker agrees that with respect to all such orders, its selling price shall be as favorable as to any other customer, for similar quantities, under substantially similar specifications and upon substantially similar credit terms. Terms as to delivery shall be satisfactory to Checker, but Checker agrees to use its best efforts to fill all orders promptly, subject to strikes and other delays beyond its control.

2179 III. On all orders procured by or through Sales Corporation and accepted by Checker, for taxicabs or other motor vehicles, Checker agrees to pay to Sales Cor-

poration a commission equal to 5% of the net selling price, such commission to be paid by Checker to Sales Corporation promptly upon the delivery of taxicabs or other motor vehicles to the purchaser.

IV. The term of this agreement shall be to and including April 30, 1934.

Gov. Ex. 299 (April 29, 1929, Letter from Markin of CCM to Automotive—)

We have today received an order from Yellow Cab Company of Chicago, Illinois, dated April 29, 1929, for 1,000 Model K, Checker cabs. This is to advise you that we acknowledge that you have obtained this order for us pursuant to the provisions of our agreement, dated April 29, 1929, and that you are accordingly entitled to the commission provided for in Paragraph III of said agreement.

Gov. Ex. 300 (August 2, 1930, Letter from A. G. Steckler of TMC to Oakland of CCM—)

The Automotive Sales Corporation has not received their commissions for 132 cabs sold to Yellow Cab Company, Chicago, 100 cabs to Yellow Cab Company, Pittsburgh and 50 cabs to Pittsburgh Transportation Company.

Kindly forward check or advise when same will be paid.

Gov. Ex. 301 (September 26, 1930, Letter from Preston of TMC to Automotive—)

This is to certify that the earned surplus as shown on the books of the Company as of August 31, 1930, amounts to $271,207.09. This entire amount in my opinion, is represented by actual net earnings of the Company from the date of its inception to August 31, 1930 and is available for the payment of dividends.

Gov. Ex. 302 (September 29, 1930, Minutes of Directors Meeting of Automotive—)

Present: E. A. Dannemann
S. I. Preston
R. J. Wyatt

being all of the Board of Directors.

Mr. Dannemann, President of the Corporation, called the meeting to order and acted as Chairman thereof.

2180 Mr. Wyatt, Secretary of the Corporation, acted as Secretary of the meeting and kept the minutes thereof.

RESOLVED that a dividend of $271 per share be and the same hereby is declared, payable on September 30, 1930, to the holders of record of the outstanding capital stock of this Corporation at the close of business on September 29, 1930, and the proper officers of this Corporation are authorized, directed and empowered to take all action and execute any and all proper papers to duly effect the payment of said dividend to said stockholders.

Gov. Ex. 303 (December 29, 1930, Minutes of Directors Meeting of Automotive—)

Present: E. A. Dannemann
S. I. Preston
R. J. Wyatt

being all of the Board of Directors.

Mr. Dannemann, President of the Corporation, called the meeting to order and acted as Chairman thereof. Mr. Wyatt, Secretary of the Corporation, acted as Secretary of the meeting and kept the minutes thereof.

• • •

The Treasurer then reported to the meeting that the amount of surplus of the Corporation which was available for the payment of dividends was in excess of $47,000.

Upon motion duly made and seconded, the following resolution was unanimously adopted:

RESOLVED that a dividend of $47. per share be and the same hereby is declared payable on December 30, 1930 to the holders of record of the outstanding capital stock of this corporation at the close of business on December 29, 1930, . . .

Gov. Ex. 304 (March 30, 1931, Minutes of Directors Meeting of Automotive—)

Present: E. A. Dannemann
S. E. Preston
R. J. Wyatt

being all of the Board of Directors.

Mr. Dannemann, President of the Corporation, called the meeting to order and acted as Chairman thereof. Mr. Wyatt, Secretary of the Corporation, acted as Secretary of the meeting and kept the minutes thereof.

• • •

2181 The Chairman then presented to the meeting a statement of the Treasurer of the Corporation as to the amount of earned surplus of the Corporation available for the payment of dividends, which was, upon motion duly

MICRO
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MATTHEW BENDER & COMPANY
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made and seconded, ordered affixed to and made a part of the records of the meeting.

Upon motion duly made and seconded, the following resolution was unanimously adopted:

RESOLVED that a dividend of Ten Dollars per share be and the same hereby is declared to be payable on March 31, 1931 to the holders of record of the outstanding capital stock of this Corporation at the close of business on March 30, 1931, . . .

Gov. Ex. 303 (December 21, 1931, Minutes of Directors Meeting of Automotive—)

Present: Messrs. E. A. Dannemann
S. I. Preston
R. J. Wyatt

being all of the Board of Directors of the Corporation.

Mr. Dannemann, President of the Corporation, called the meeting to order and acted as Chairman thereof. Mr. Wyatt, Secretary of the Corporation, being present, acted as Secretary of the meeting and kept the minutes thereof.

• • •

Mr. Wyatt, the Treasurer of the Corporation, then stated to the meeting that the earned surplus of the Corporation as at November 30, 1931, amounted to $8,338.29 and that the surplus of the Corporation at the present time is at least equal to that amount, and he presented to the meeting a certificate to that effect.

Upon motion duly made and seconded, the following resolution was unanimously adopted:

RESOLVED that a dividend of $8 per share be and the same hereby is declared, payable on December 22, 1931, to the holders of record of the outstanding capital stock of this Corporation at the close of business on December 21, 1931, . . .

Gov. Ex. 306 (November 28, 1932, Minutes of Directors Meeting of Automotive with attachments—)

Present: E. A. Dannemann
S. I. Preston
R. J. Wyatt

being all of the Board of Directors of the Corporation and a quorum.

2182 Mr. Dannemann, President of the Corporation, called the meeting to order and acted as Chairman thereof. Mr. Wyatt, Secretary of the Corporation, acted as Secretary of the meeting and kept the minutes thereof.

• • •

The President then stated that he had terminated the Sales Contract between this Corporation and Checker Cab Manufacturing Corporation, and he presented to the meeting a copy of the instrument terminating the same.

Upon motion duly made and seconded, the following resolutions were unanimously adopted:

RESOLVED that all action of the President of this Corporation in terminating the Sales Contract between this Corporation and Checker Cab Manufacturing Corporation be and the same hereby is in all respects approved, ratified, confirmed and adopted as and for the action of this Corporation.

FURTHER RESOLVED that the instrument terminating said Sales Contract be affixed to and made a part of the records of this meeting.

Upon motion duly made and seconded, the following resolutions were unanimously adopted:

RESOLVED that it is deemed advisable, in the judgment of the Board of Directors of this Corporation, and most for the benefit of this Corporation, that it should be dissolved.

FURTHER RESOLVED that whenever all the stockholders, having voting power, shall consent in writing to a dissolution of this Corporation, such consent, together with a list of the names and residences of the directors and officers, certified by the President and Secretary and Treasurer, shall be filed in the office of the Secretary of State of Delaware.

AUTOMOTIVE SALES CORPORATION
CERTIFICATE OF DISSOLUTION BY UNANIMOUS CONSENT

The subscriber, Parmelee Transportation Company, a Delaware corporation, the holder of all the capital stock of Automotive Sales Corporation, . . . does hereby consent in writing to the dissolution of said Automotive Sales Corporation, . . .

PARMELEE TRANSPORTATION COMPANY
By s/ E. S. HIGGINS
Vice-President

2183 *Gov. Ex. 307 (May 21, 1931, Minutes of Directors Meeting of Yellow—)*

There were present: Ernest H. Miller
Thomas B. Hogan
S. H. Kesner
Benjamin Samuels
Edward N. D'Ancona

constituting a majority and quorum of the Directors of the Corporation.

In the absence of the President, Mr. THOMAS B. HOGAN, the Vice President of the corporation, acted as Chairman of the meeting, and Mr. EDWARD N. D'ANCONA acted as Secretary of the meeting.

• • •

Mr. Miller stated that he had negotiated with CHECKER CAB MANUFACTURING CORPORATION for the purchase by this corporation of 1,000 Model M Checker Cabs, . . .

We hereby place an order with you for one thousand (1,000) Model M Checker Cabs on the following terms:

• • •

3. *Price*—The total purchase price to be $1,908,000.00, to be paid you in the following manner:

(a) By the delivery to you at your factory at Kalamazoo, Michigan, of 1,000 Model K Checker Cabs now operating in our fleet. The amount of credit against the purchase price to be given to us by you for the said Model K Checker Cabs shall be our book value of said cabs, which is hereby fixed, as of May 1st, 1931, at $838.78 per cab, less the sum of 2¢ per mile said cabs shall travel after May 1st, 1931, to the date of their delivery to you. Said value is now estimated by us to be at said date of delivery approximately $856.00 per cab.

(b) By the payment in cash of the difference between the value of said Model K Checker Cabs and $1,908,000.00 in the manner hereinafter stated:

4. Within twenty-four hours after the execution of this instrument we will deposit with the Foreman-State National Bank, of the City of Chicago, as a special deposit (hereinafter referred to as "THE DEPOSIT"), the sum of $1,250 per cab hereby ordered or an aggregate of $1,250,000, which moneys from time to time in THE DEPOSIT shall be subject to withdrawal to the extent and in the manner hereinafter stated, to secure to us the delivery of said Model M cabs.

• • •

In the event of a dispute as to whether or not there has been a failure to deliver said Model M Cabs in accordance with the terms and conditions in this order you hereby agree that E. H. Miller, President of the Transportation Management Corporation, shall be the sole arbiter of such dispute, and his judgment shall be final and binding upon the parties hereto, . . .

2184

• • •

The matter was fully considered, and on motion duly made and seconded and by the affirmative vote of all the directors of the corporation present at this meeting, the following resolutions were unanimously adopted:

Resolved, that the purchase by this corporation of said 1,000 Model M Taxicabs from Checker Cab Manufacturing Corporation, in acordance with and on the terms set forth in the order submitted to this meeting, be and the same hereby is authorized, . . .

Gov. Ex. 308 (April 18, 1935, Minutes of Executive Committee of CCM—)

A special meeting of the Executive Committee of Checker Cab Manufacturing Corporation was held at the office of R. S. Pruitt, 105 West Adams Street, Chicago, Illinois, . . .

There were present at the meeting: L. B. Manning
W. H. Beal
Morris Markin

being all of the members of the Executive Committee.

Mr. Markin acted as Chairman and R. S. Pruitt, Secretary of the corporation, who also attended the meeting, acted as Secretary thereof.

• • •

Mr. Markin also stated that he had negotiated a contract to build for the Chicago Yellow Cab Company, Inc. 1,000 six-cylinder cabs, at a price of $1350.00 each f. o. b. Kalamazoo, Michigan, fully equipped except for tires . . .

Thereupon the following resolution was offered, seconded and unanimously carried:

Be it Resolved by the Executive Committee of the Checker Cab Manufacturing Corporation that the action of Morris Markin, President of this corporation, in negotiating a contract to build for the Chicago Yellow Cab Company, Inc. 1,000 six-cylinder cabs, at a price of $1350.00 each f. o. b. Kalamazoo, Michigan, fully equipped except for tires, shall be and the same is hereby ratified, confirmed and approved.

Gov. Ex. 309 (August 21, 1935, Letter from Rank to Samuels of Yellow—)

In talking over unfinished business with Morris this morning mention was made of the possibility of Yellow Cab ordering 500 additional Model Y cabs at or about
2185 the price of the 1,000 now on order.

I do not know how much discussion has been had between Morris, Tom and yourself on this subject, or whether the matter has been lost sight of in the general upset of the last few weeks. I would, however, like to sit down with Tom and you some day toward the end of next week and determine whether or not it is desirable to make any recommendations to the Board of Directors in this connection.

Gov. Ex. 310 (August 22, 1935, Letter from Samuels to Rank—)

Your letter of August 21st received and contents noted. We shall discuss this matter of the additional cabs at once so that we may be in a position to fully take it up with you upon your next visit, so that the matter may be thrashed out at the next regular meeting of the Board.

Gov. Ex. 311 (September 3, 1935, Letter from Hogan, President of Yellow, to Rank, with attachment consisting of letter dated September 3, 1935 from Hogan, President of Yellow to CCM, attention: Oakland—)

I am attaching herewith copy of letter sent today to Checker Cab Manufacturing Corporation.

We desire to call your attention to the fact that under the terms of our contract, in re the purchase of 1000 cabs, we should have had delivered to us prior to date a minimum of 250 cabs, as our contract called for that delivery prior to the end of August.

In our conversations with you, you informed us that it would be impossible to deliver 250 cabs to us prior to August 31st, but assured us that this would be made up within the first ten days of September, so that prior to September 10th, we would have delivery of 333 cabs.

We have just heard, and it is rumored about the street generally, that your company is about to deliver 100 taxicabs to Checker Taxi Co. of Chicago which, you know, of course, is our main competitor here, these taxicabs being approximately of the same specifications as our own. It must be apparent to you, as well as it is to us,

that these 100 taxicabs are being delivered to our competitor at the same time that you are violating your contract with us and that these 100 taxicabs should be delivered to us, in order to fulfill your obligation under our contract. Needless to say, we cannot sit by and allow this serious breach of contract, which you can well understand must necessarily result in serious damage to us. We expect you to fulfill your promise to the letter, just as you expected us to fulfill our promise to the letter
2186 and, consequently, we are at this ~~early~~ date serving you with notice that in view of your breach during the month of August, we insist that our quota of cabs, as per your promise, be delivered to us prior to September 10th, namely 333 cabs, and that the balance be delivered to us promptly, in accordance with our agreement. Under no circumstances can we countenance delivering cabs to our competitor, which rightfully belong to us.

In this connection, we wish to call your attention to the fact that practically every cab delivered to us up to date has necessitated a considerable amount of labor in checking up negligence in your assembly. It would have been absolutely dangerous to allow these cabs upon the street in the condition in which they were received. Our Mr. Stouffer called your attention to this immediately and, of course, the only thing that could be done by us, under the circumstances, was to employ considerable labor to check up on the mistakes that were made in the assembly in your factory, and considerable overtime labor had to be employed in order to get the cabs onto the street. Naturally, you cannot expect us to shoulder this bill and we expect you to reimburse us for all of this unnecessary expense, due solely to the negligence in the matter of assembly at your plant. We hope in the future the assembly will be much more efficient, so as to make it unnecessary for us to go to this large expense in checking the cars after their delivery to us.

You are hereby notified that if any more cabs are tendered for acceptance which do not comply with the contract, we shall not accept same and if the cabs are not delivered to us on September 10th and in the future as provided for in the contract, we shall consider such failures on your part as a breach of the contract and will consider the contract completely terminated.

The cabs we accepted to date which were not in compliance with the contract and which we only accepted at

your request has caused us an outlay of approximately $1,082.40 to put the cabs in running order. We shall hold out of the final payment this amount of money; but the fact we have accepted these unfinished cabs is not to be taken by you as any waiver on our part of the strict terms of the contract in the future, for from now on we shall expect all cabs tendered us to comply 100% with the contract and specifications.

2186A *Gov. Ex. 312 (September 4, 1935, Letter from Hogan of Yellow to Rank, with attachment consisting of letter dated September 4, 1935, from Hogan to CCM, attention: Oakland—)*

I am attaching herewith copy of letter sent today to the Checker Cab Manufacturing Corporation.

We desire to call your attention to the fact that although we were promised approximately 35 cabs on yesterday, Tuesday, no cabs arrived. We were advised, of course, that you could not make deliveries on Monday on account of it being a holiday, but we relied upon your assurance that the approximate daily average would arrive on Tuesday, but were disappointed in receiving none. Of course, if this keeps up, there will be absolutely no chance on the part of your factory to deliver to us, by the 10th of September, 333 cabs as promised, and you are already far behind schedule, that we talked of after it became apparent that you were not going to be able to comply with the delivery of the 250 cars during the month of August, as per contract.

May we also call your attention to the fact that with the charges piling up against your company, due to the fact that we are compelled to expend large sums of money for labor in checking on the cabs as they arrive, due to the fact that on account of the negligence at your end the cabs have not been properly assembled, as we advised you in our letter of yesterday, we would like some definite understanding with reference to the matter of payment of cabs as they are delivered. As far as we are concerned, we are willing to pay the contract price, as agreed upon, if there is a definite understanding between us that this may be done without prejudice to our claim for damages, due to the various matters which you have already called to your attention. We hope to receive your assurance in this regard so as to prevent any misunderstanding, otherwise we shall be compelled to hold out a sufficient amount of cash on the purchase price of

the cabs, as they are delivered, to protect us for any damages sustained, due to the fact that the cabs have been assembled in a negligent manner.

Will you be good enough, therefore, to acknowledge receipt of this letter immediately and let us have a statement as to your position in the matter, so that we may be guided accordingly.

Gov. Ex. 313 (September 10, 1935, Letter from Bieze of Yellow, to Rank, with attachment consisting of letter dated September 6, 1935 from Oakland of CCM to Hogan of Yellow—)

2187 I am attaching herewith copy of Ralph Oakland's reply to Tom Hogan's letters of September 3rd and 4th.

This will acknowledge receipt of your letters of Sept. 3rd and 4th and also confirm our verbal understanding between the principle officers of your company and the writer.

Up until last night we delivered 218 cabs to your company and are shipping 32 today, which makes a total of 250 cabs that will be received by your company tonight. We anticipate shipping 40 cabs on Monday, September 9th and 43 on Tuesday, September 10th, bringing the shipments up to your schedule.

From that point on we will deliver approximately ten (10) cabs per day which will give you your total of 500 cabs by September 30th.

In case we are unable to make the entire shipment on either September 9th or 10th, we will take care of any deficiency on the 11th of the month or as soon thereafter as possible. We will likewise ship you 250 cabs in October and 250 in November, with a possibility of increasing the deliveries in October.

In view of the changes which we have made, we are billing you for these cabs as follows:

Cost of Cab	$1,394.00	
3% Federal Excise Tax	41.82	1,435.82
Driveaway Expense from Kalamazoo to Gary	6.00	1,441.82

We have already received a deposit of $135.00 per cab on the 1,000 cabs to be built and have received a part payment of $1,250.00 per cab on 184 cabs.

You have advised us that it has been necessary for you to make unusual expenditures due to the fact that some of the cabs which you have received were not up to

specifications. We have already given you a guarantee that we will make good on any defects of material or workmanship and we shall be glad to accept any reasonable charges for any instances where there has been or will be any defective material or workmanship on cabs delivered to you.

Gov. Ex. 314 (November 7, 1935, Letter from R. E. Stouffer, Vice President of Yellow, to Tuttle of CCM—)

I am submitting herewith, a complete summary of the troubles we have encountered with the Model Y Cabs to date. Some of these items are of the utmost importance while others are being furnished to you as a matter of record. [237 items of trouble then listed.]

Gov. Ex. 315 (November 27, 1935, Letter from Bieze of Yellow to Rank, with attachment consisting of letter dated November 25, 1935 from Oakland of CCM to Yellow—)

2188 I am attaching herewith copy of letter which I thought you might be interested in seeing.

Upon checking our records we find that you have not as yet paid us for the last nine cabs on which there is a balance due of $11,761.38.

We also know that you have claims against us for defective material and workmanship which you have previously advised us about.

We would appreciate it very much if you would take care of this balance owing us, and wish to assure you that if you do it will in no way prejudice your claim against us.

Gov. Ex. 316 (December 2, 1935, Letter from Rank of Parmelee to Bieze of Yellow—)

This will acknowledge receipt of your letter of November 27th, together with enclosure, being copy of letter addressed to you under date of November 25th by Mr. R. E. Oakland, Vice-President and Treasurer of Checker Cab Manufacturing Corporation.

In this connection, I am of the opinion that it is entirely unnecessary to hold up the payment for the last nine cabs delivered to you on account of your claim against the manufacturer. I feel quite confident that you will have no difficulty whatever in working out a satisfactory adjustment and an immediate settlement.

Gov. Ex. 317 (December 26, 1935, Letter from Rank of Parmelee to Oakland of CCM—)

In conversation with Messrs. Hogan, Bieze and Stauffer last week the matter of their claim against the factory for defective workmanship was under discussion.

As I understand it, Stauffer claims to have spent 5,431 hours on general tightening, cutting sills for brake clearance, and installing new hose connections; 225 hours on repairs to gas tanks; 125 hours on window regulators and refinishing chrome work, the last two operations not yet having been completed. This makes a total of 5,781 hours which, figured at 60¢ per hour, would amount to $3,468.60.

Will you kindly let me know how you feel about this claim and what work, if any, you wish me to do or have done in connection therewith.

Gov. Ex. 318 (December 30, 1935, Memorandum from Oakland to Rank—)

I have your letter of 12-26-35 regarding the estimate of the amount already expended by Chicago Yellow Cab Company, which they claim should be charged back to us as warranty expense.

2189 We, of course, are agreeable to paying all of their expenses for cutting the sills; installing new hose connections; repairing of gas tanks; repairing of window regulators and refinishing the chrome work, but we do not believe we should be charged with the general tightening and this is the major portion of the hours charged against us.

When a cab is purchased it is a known fact to both manufacturer and operator that if the cabs are to be maintained properly it is necessary to have all the nuts and bolts tightened not once but several times until the cab is properly broken in.

None of the operators to whom we have ever sold cabs and this includes Chicago Yellow Cab Company have heretofore made any charge against us for tightening and we do not see why they should now attempt to change this policy.

While it is true that some of the first cabs which were shipped to Yellow Cab were not as tight as they might have been, nevertheless, if they were going to properly maintain their cabs they should have a general tightening as soon as the cabs are received and I am sure that you will agree with me that it doesn't cost any more to tighten the nuts up two turns instead of one turn.

For your further information, I wish to advise you that Checker Taxi Company of Chicago, have not made any claim to us for warranty expense, with the exception of replacing defective material and I believe you realize that this organization would be the first to make a claim if they thought there was any reason for it.

We would appreciate it if you would have another conference with the officers of Yellow Cab Company and see if it not possible to make a reasonable adjustment of their claim against us.

Gov. Ex. 319 (December 13, 1935, Letter from Samuels of Yellow to CCM—)

Your reply, covering the question of increased cost on certain parts and the items contained in your letter showing these increases, has been definitely considered by us and while we cannot, at this time, come to any definite conclusion as to the matter of entering into a contract for delivery of cabs next year, we have definitely decided that one thing will have to be incorporated in the contract, if one is made, and that is a definite covenant on the part of the factory that if we do purchase 500 taxicabs, to be delivered in 1936, the factory will have to agree, in the contract, not to sell any new taxicabs to any other person, firm, or corporation in Chicago or its suburbs during the year 1936. We will have to insist on this protection to ourselves, in view of the fact as to what happened during 1935, and I believe you will agree with us that, under all the circumstances of the case, which we have fully explained to your representatives
2190 heretofore, this protection to us is something which we have a perfect right to ask for and insist upon.

We feel certain that, if this feature can be embodied in our agreements, in view of the discussions which we have had orally as to the question of increased cost of various parts entering into the automobile and the necessity of protecting ourselves against still further increased costs will probably result in a definite contract being drawn without any further delay.

We would therefore suggest that you let us know, at your earliest convenience, how you feel upon the proposition herein suggested.

Gov. Ex. 320 (December 16, 1935, Letter from Oakland of CCM to Yellow—)

We have your letter of December 13th requiring, as a consideration for your order of 500 taxicabs to be delivered in

1936, that we must agree to confine our sale of Model "Y" taxicabs in Chicago and suburbs exclusively to you in 1936. This must be taken up with Mr. Markin and we are sending him a copy of your letter with request that he communicate with you directly.

We hope that this matter can be settled satisfactorily and we may receive your order sufficiently in advance to take advantage of the increased quantity purchasing to our mutual benefit.

Gov. Ex. 321 (December 23, 1935, Letter from Samuels of Yellow to CCM—)

In accordance with your last letter, we have had several conversations with Mr. Markin in Chicago and I believe that he is convinced that the proposition of incorporating a clause to the effect of no sales to any other person, firm or corporation in Chicago, during 1936, is perfectly reasonable and he sees no objection to incorprating such a clause.

He suggested, however, that if a contract is to be made, he would like to have the same prepared by the attorney for the factory, Mr. Fuller. This will be perfectly agreeable to us, as we ourselves would like to see just what this contract will contain and, if you will kindly get in touch with your attorney and draft up a preliminary agreement and submit it to us, we shall be very happy to see and pass upon the same and submit it to our Board at its next regular meeting.

Gov. Ex. 322 (January 17, 1936, Letter Agreement between Yellow and CCM—)

In confirmation of the various negotiations heretofore conducted between us relative to the purchase of new
2191 taxicabs, the following shall evidence the agreement reached between us:

We agree to purchase from you, and you agree to sell to us, five hundred (500) new Model Y Checker taxicabs, without tires, at the price of $1,500 each, f. o. b. Kalamazoo, plus all State, Federal and City excise and/or sales taxes and delivery charges, payment to be made in cash in full against the delivery of such taxicabs to us; provided, however, that of said purchase price $100,000 shall be paid in cash within ten (10) days from the date hereof, $50,000 shall be paid in cash on the 27th day of February, 1936, and $50,000 shall be paid in cash on the 27th day of March, 1936, such prepayments to be credited pro rata against the purchase price aforesaid of each taxicab purchased hereunder upon delivery thereof, it being the intent of this agree-

ment that said prepayments shall represent payments in advance of four fifteenths (4 15ths) of the net purchase price aforesaid of each of said taxicabs . . .

This purchase of taxicabs is conditioned upon your agreement, which you hereby make, that prior to February 15th, 1937 you will not sell or permit the sale of any taxicabs in the City of Chicago, or its immediate environs, to any person, firm or corporation that competes directly or indirectly with the undersigned without our written consent first had and obtained.

Gov. Ex. 323 (October 21, 1936, Letter Agreement between Yellow and CCM—)

In connection with the negotiations heretofore conducted with your company, in reference to purchase of additional taxicabs, we herewith submit to you the terms and conditions thereof as we understand them:

We agree to purchase from you, and you agree to sell to us, one hundred twenty-five (125) new Model Y Checker taxicabs, without tires, at the price of Fifteen Hundred ($1500.00) Dollars each, . . .

We shall pay to you on the 1st day of November, 1936, the sum of Twelve Hundred ($1200.00) Dollars, per cab, amounting to the total sum of One Hundred Fifty Thousand ($150,000.00) Dollars, and the balance of the purchase price shall be paid to you after the delivery of the total number of taxicabs, as hereinbefore set forth.

• • •

This purchase of taxicabs is, however, conditioned upon your express agreement, which you hereby make, not to sell or deliver to any person, firm or corporation, to be operated in Chicago or its suburbs, any taxicabs of your manufacture of a later or improved model than the Model Y taxicabs herein purchased, prior to October 15, 1937, without the written consent of the undersigned first had and obtained.

2192 *Gov. Ex. 324 (August 16, 1937, Letter from Oakland of CCM to Markin—)*

As per your request I am giving you herewith the sales which we have made to Yellow Cab Company of Chicago.

From May to November, 1929, we delivered 1035 Model K taxicabs at a price of $1906.00 . . .

From February to November, 1930, 1165 Model K taxicabs were delivered at a price of $1906.00 . . .

During November and December, 1931, 1000 Model M taxi-cabs were delivered at the price of $1906.00 plus 50¢ for the installation of meter, or a total of $1906.50. 1000 Model K taxi-cabs were taken in in trade, on which we made an allowance of $620,878.81, so that the net cash price was $1,285.62 each.

From August to November, 1935, we delivered 1000 Model Y taxi-cabs at a price of $1,394.00, excise tax $41.82, drive-away to Gary, Indiana, $6.00, total $1,441.82.

From May to November, 1936, we delivered 620 Model Y taxi-cabs at a price of $1,500.00 plus $45.00 for excise tax, plus $6.00 for drive-away to Gary, Indiana, making a total price of $1,551.00 each.

In March, 1937, 30 Model Y taxi-cabs were delivered for the above price of $1,551.00 each.

Gov. Ex. 325 (June 8, 1939, Letter from Frank Magann to Hogan of Yellow—)

I have been going through a strike with the CIO. About fifty per cent of my equipment was on the road at all times and I think I got it beat although we are still before the Arbitration Board of Massachusetts.

Our drivers have formed and are trying to put over a driver's union, and if so, I think that will be the solution of my trouble.

The population of my city is 138,000 people, and I have been operating on a rate of 40¢ for the first mile and 5¢ for a fifth of a mile thereafter which in my estimation is too high. I would like your ideas on what you think would be a rate where I could keep these cabs busier than they have been. Please quote me your rate. Also what do you think of a 35¢ flag throw for the first mile and a half, and then 5¢ a third thereafter.

Any ideas you can give me on this, I shall appreciate very much. Hoping this finds you and the family well, I remain,

Gov. Ex. 326 (June 13, 1939, Letter from Hogan of Yellow to Magann—)

Yours received. I am sorry to learn that you have had labor trouble.

2193 You are sure handing me a hard one to answer. Everyone knows though that the low rates bring a larger volume of business. It is just a question of accidents. Accident experience runs up with the mileage. If I was to put in low rates, I would try and get my outfit "judgment proof" as you are able to settle your claims much easier.

35¢ for the first mile and a half and 5¢ a third thereafter, would do the business. Your guess probably would be just as good and maybe better than mine. Our rate is 20¢ for the first one-third and 10¢ for each two-thirds thereafter and $2.00 an hour for waiting time. This is a good rate to make money on if there is any business at all. Of course, with the comparison of rates in other cities, it is high.

The best thing I know of if you can get away with it, is to buy light cars and rent them out to the drivers at $2.25 and $2.50 a shift and let them pay for the gas and run for 5¢ a half mile. I know an outfit in one of the Chicago suburbs who have 25 cars running this way and made $600.00 in a month. They have 2 competitors that have 35 or 40 cars each and they are doing well on the same basis. The town is about 150,000 inhabitants. They all have themselves "judgment proof" and don't have to worry about accidents. They complied with the law by insuring with a phony insurance company. From what I can learn of cut-rate cab companies, they are having their own troubles on account of high wages. We are making a little money as we have run our cars four years.

The price of light cars now are down to as low as $564.00. I know of one man that bought 30 new cars. You probably saw in the paper where Los Angeles bought 480 Buicks. They told me that with their trade-in allowance on the De Sotos which they were running, the cars stand them $615.00 at Flint with the tires. They told me this in confidence and I would not want it broadcast that I was the one that gave out the news.

Gov. Ex. 327 (July 1, 1939, Minutes of Directors Meeting of Yellow—)

The following directors were present: Thomas B. Hogan
R. H. Bieze
Paul L. Houston
Levin Rank
Walter S. Laird

constituting the entire Board of Directors.

Messrs. Benjamin Samuels and James A. King, of the Boa[illegible] of Directors of Chicago Yellow Cab Company, Inc., were also present at the meeting.

Mr. Thomas B. Hogan acted as chairman of the meeting and Mr. R. H. Bieze acted as secretary.

• • •

2194 Upon motion duly made, seconded and unanimously carried, it was

RESOLVED that the officers of this company are hereby authorized to purchase not to exceed 1250 taxicabs at a price not to exceed $1325.00 each F. O. B. factory, on such terms and conditions with reference to equipment and mechanical detail and to the matter of delivery as the officers shall deem proper, and are further authorized to deposit with the manufacturer upon such purchase price not to exceed 10% thereof.

Gov. Ex. 328 (October 3, 1939, Minutes of Directors Meeting of Parmelee—)

Present: Levin Rank
Paul L. Houston
Walter S. Laird
R. J. Wyatt
James A. Doherty

being all of the directors of the Corporation and a quorum.

Mr. Rank, President of the Corporation, called the meeting to order and presided thereat. Mr. Wyatt, Secretary of the Corporation, acted as Secretary of the meeting and kept the minutes thereof.

* * *

The Chairman then stated that a replacement program of the taxicabs of the various subsidiaries and affiliated companies should be adopted at this time, and after discussion, upon motion duly made and seconded, the following resolutions were unanimously adopted:

RESOLVED that the purchase of 2000 taxicabs by National Transportation Co. Inc., of 100 to 125 taxicabs by Yellow Taxi Company of Minneapolis, of 125 taxicabs by Yellow Cab Company of Pittsburgh, and of 125 taxicabs by Pittsburgh Transportation Company, all said companies being subsidiaries of this Corporation, at a price of approximately $1,345 per cab, plus driveaway and state and Federal taxes, said price to be subject to adjustment in the event of increased costs, be approved, . . .

FURTHER RESOLVED that this Corporation, as management adviser of Yellow Cab Company of Chicago, Illinois, hereby approves the purchase by said Yellow Cab Company of 1,200 new Checker taxi-cabs at the price and on the terms set forth in the form of cab purchase agreement proposed to be executed by said Yellow Cab Company and Checker Cab Manufacturing Corporation pre-

sented to this meeting, and that said form of cab purchase agreement be filed with the Secretary of this Corporation;"

FURTHER RESOLVED that this Corporation, as management advisor of said Yellow Cab Company, approves
2195 the repairing of up to 650 Model Y Taxicabs owned by it at a maximum expenditure of $250 per cab for the purpose of maintaining such present equipment in running order.

Gov. Ex. 329 (October 19, 1929, Minutes of Directors Meeting of Yellow—)

The following directors were present: Thomas B. Hogan
Paul L. Houston
Walter S. Laird
Levin Rank
R. H. Bieze

constituting the entire Board of Directors.

Messrs. Benjamin Samuels, James T. Igoe and Raymond J. Wyatt, of the Board of Directors of Chicago Yellow Cab Company, Inc., were also present.

Mr. Thomas B. Hogan acted as chairman of the meeting and Mr. R. H. Bieze acted as secretary.

* * *

There was thereupon presented to the meeting a proposed contract between this company and Checker Cab Manufacturing Corporation for the purchase of 1200 taxicabs without tires, at the price of $1345.00 each F. O. B. Kalamazoo, Michigan, plus any State and Federal excise and/or sales taxes, to be delivered in monthly allotments during the years 1940 and 1941. . . .

* * *

A discussion ensued in reference to the advisability of obtaining a lighter cab which would cost less than the type of cab now being used by this company. It was pointed out that the last 1650 cabs purchased by this company and delivered during the years 1935 and 1936 have been run approximately 100,000 miles per cab and will continue to be run for a considerably longer period. The directors agreed that a lighter cab would not stand use for the length of time or the number of miles which this company is now using its cabs; upon comparison of the probable length of life of a cheaper cab and the length of life of the present type of cab, it was the consensus of opinion of the directors of this company and of Chicago Yellow Cab Company, Inc., that it is

more economical for this company to continue to purchase the heavier type of cabs which it is now using.

Upon motion duly made, seconded and unanimously carried, it was

RESOLVED that the agreement between Yellow Cab Company and Checker Cab Manufacturing Corporation for the purchase of 1200 Checker taxicabs without tires at the price of $1345.00 each, F. O. B. Kalamazoo, Michigan, plus any State and Federal excise and or sales taxes,

2196 . . . There was then presented to the meeting an agreement dated September 22, 1939, between Transportation Maintenance Corporation and this corporation in reference to the repair of 650 Model Y-2 Checker taxicabs according to the specifications attached to said agreement, at an average price not to exceed $250.00 per taxicab, and it was stated that the work began immediately after the execution of the contract and is to continue at the rate of 100 taxicabs per month until completion.

Upon motion duly made, seconded and carried, it was

RESOLVED that the action of the President of this corporation in signing and executing in the name and on behalf of this corporation an agreement dated September 22, 1939, for the repair of 650 Model Y-2 Checker taxicabs of this corporation at an average price not to exceed $250.00 per taxicab, on the terms and conditions therein set forth, be and the same is hereby ratified, confirmed and approved.

Gov. Ex. 330 (October 20, 1939, Agreement between Yellow and CCM—)

FIRST: Yellow agrees to purchase from Checker and Checker agrees to sell and deliver to Yellow, subject to the terms of this agreement, one thousand two hundred (1,200) Checker taxicabs, . . .

Gov. Ex. 331 (June 12, 1941, Letter from Adams Oil Company to Yellow—)

Please advise how the writer can secure a Yellow Cab franchise for Valley Mills, Texas.

Gov. Ex. 332 (June 14, 1941, Letter from Samuels of Yellow to Adams Oil Company—)

If there is no one operating with what is known as the standard Yellow Cab, I would suggest that you contact the sales department of Checker Cab Manufacturing Corpora-

tion at Kalamazoo, Michigan, attention Mr. R. E. Oakland, because they furnish us with all of our standard cabs and can advise you how to proceed to obtain the exclusive right to operate in your city.

Gov. Ex. 333 (August 20, 1945, Letter from Oakland to Buze—)

Returned herewith please find copy of your order, which has been accepted.

Gov. Ex. 334 (August 15, 1945 Letter Agreement between Yellow and Checker—)

2197 We herewith offer to purchase from your Company, for replacement purposes, 1595 purpose-built Checker taxicabs, to be delivered to this Company as soon as possible. It is understood that these taxicabs are to be constructed according to the specifications discussed with you at the factory and in accordance with the drawings and designs exhibited to us at the factory.

It is further understood that this order covers the above mentioned taxicabs when, as, and if manufactured by your Company and accepted by our Company. The price and terms of payment for such taxicabs shall be the ceiling price and terms as fixed by such agency of the United States Government as shall have jurisdiction over the matter of fixing ceiling prices upon automobiles and taxicabs, but shall be subject in all events to acceptance thereof by our Company.

It is further understood that formal contract will be executed between your Company and ours and in said contract specific dates for delivery of such equipment shall be specified.

This order and all rights and obligations hereunder are subject to and shall be controlled by all regulations, orders, rulings and directives which now exist or may hereafter be enacted by any present or future governmental agency affecting the question of manufacture, delivery or prices of such taxicabs; and all present and future governmental laws and regulations when and wherever available, shall be deemed to modify and amend this order.

We are enclosing an extra copy of this letter so that one copy thereof maybe retained by your Company and the other to be signed and then delivered to us.

Gov. Ex. 333 (September 17, 1945, Minutes of Directors Meeting of CCM)

There were present at the meeting: Morris Markin
Ralph E. Oakland
James A. King
Herbert C. Snow

being all the directors of the corporation except Mr. R. S. Pruitt, who was unable to attend the meeting.

Mr. Morris Markin, President of the corporation, acted as Chairman, and Mr. Ralph E. Oakland, Vice President and Treasurer of the corporation, acted as Secretary of the meeting.

1. The Chairman stated that this corporation had been engaged exclusively in war work since the start of the war and that all contracts had been cancelled on or about August 16, 1945. He further stated that he had had consultations with the War Production Board relative to the manufacture of a new taxicab and that as a result of these conferences this company had been authorized to manufacture and sell 2,000 taxicabs in the year 1945, and 2,200 taxicabs in
2198 the three months ending March 31, 1946. He further stated that because of changed conditions it was his opinion that the operating companies needed a much lighter taxicab than had formerly been built by this corporation, making it necessary to design an entirely new taxicab. He stated that when this corporation had obtained permission from the War Production Board to manufacture a new taxicab that he had a new taxicab designed incorporating the features which he felt were needed and desirable under present operating conditions, and that he had placed tentative orders with the manufacturers of all major units for materials to produce 4,200 taxicabs. These orders were placed with the various manufacturers so they in turn could commit themselves to their suppliers for the materials required to produce these units. Mr. Markin also stated that the taxicabs in the fleets of all the customers of this company were in such condition that it was desirable to replace them at the earliest possible moment, and that while no orders had as yet been solicited from these customers he had every reason to believe that a substantial number of orders for taxicabs would be received after a sample model had been built and shown and a price established for it.

Mr. Markin asked the Board of Directors to approve his actions as stated above, and also asked authority to spend

such sums of money as would be necessary to build a sample cab, and also to place orders for the tools of this taxicab up to a maximum sum of $500,000.00.

The following resolutions were thereupon offered and unanimously carried:

BE IT RESOLVED that all actions of the President in the preparation for the manufacture of a new taxicab be and are hereby approved; and be it further

RESOLVED that the President be authorized to spend such additional sums of money as are necessary to complete the sample cab, and to make such additional expenditures up to a maximum sum of $500,000.00 for the tooling of this taxicab.

2199 *Gov't. Ex. 336. (August 26, 1936. Letter from Rank to Oakland of CCM —)*

I am enclosing herewith two copies of comparative statistics covering the Chicago operations for the month of July, 1936.

Gov't. Ex. 337. (January 25, 1937. Letter from Oakland to Sokoll—)

Enclosed are the comparative figures of Checker and Yellow for the month of December:

Total Model V Equipment	500	1620
Miles Per Cab Per Day	111.1	97.0
Revenue per Cab per Day	12.37	12.61
Revenue per Mile Operated	.1114	.1300
Shifts per Cab	1.54	1.45
Revenue per Shift	8.02	8.73
Percent of Commission to Revenue	.3277	.311
Gasoline Miles per Gallon	8.9	8.72
Maintenance Cost per Mile	.0051	.0052

Gov't. Ex. 338. (February 19, 1937. Letter from Rank of Parmelee to Cook of Yellow—)

We have not yet received the material for completing the operating comparison for the two Chicago fleets for the month of January. Will you kindly send this information to us as soon as possible.

Gov't. Ex. 339. (July 25, 1938. Letter from Oakland of CCM to Bieze of Yellow—)

Some time ago Mr. Markin requested you to forward to me copy of your monthly reports. To date, I have not received any and wonder why you are holding them up.

Gov't. Ex. 340. (August 1, 1938. Letter from Bieze of Yellow to Oakland of CCM—)

I have your letter of July 25, 1938, with reference to our monthly reports. We are enclosing herewith copies of the June, 1938, reports. The July reports will be forwarded to you on or about August 10th.

2200 *Gov't. Ex. 341. (August 14, 1940. Letter from Rank of Parmelee to Oakland of CCM—)*

I am delighted with your offer to take over the Chicago comparative operating report. At present we are sending one copy to Mr. Markin, two copies to Mr. Bieze, two copies to you, and the following information to Mr. King:

Total Equipment—Miles Per Cab per Day—
Gasoline Miles Per Gallon—Oil Miles Per
Gallon—Maintenance Cost Per Mile.

I would suggest that in the future you send one copy to Mr. Markin, one copy to this office, one copy to Mr. Bieze, one copy to Mr. Stouffer and such information as we have been giving Mr. King. This assumes, of course, that you will take care of Mr. Sokoll.

Gov't. Ex. 342. (December 26, 1941. Letter from Oakland to Bieze with attachment—)

I am enclosing herewith a revised copy of the statistical data of the various operations for the month of September, which has been adjusted to conform with the majority of suggestions made by the various interested parties.

Will you kindly submit your figures for the month of December and for the year 1941 to this office in accordance with this form, which will be distributed immediately after receipt of all the information. If there is any information required on this form which is not available and which would entail any appreciable amount of work please omit it temporarily, until we decide if the results to be obtained from this report will justify the additional amount of work.

I appreciate all the suggestions which you have made for getting this report in its present form, and will be very happy to receive any further suggestions which may help to get the most out of this report.

(From attachment):

STATISTICAL DATA PERTAINING TO LARGE FLEET OPERATORS OF CHECKER CABS—MONTH OF SEPTEMBER, 1941.

	New York National Bell		*Chicago Yellow Checker*		*Pittsburgh*	*Minneapolis*
Number of Cabs in Fleet	2000	400	1204	826	250	115
Number of Cabs Available for Operation	1769	400	1204	826	250	115

2201 *Gov't. Ex. 343. (January 12, 1942. Letter from Oakland of CCM to Bieze of Yellow—)*

When I was in New York last week we decided that the comparative monthly statement of operations would be compiled and sent out under the supervision of R. J. Wyatt.

Will you kindly submit the December statements and all subsequent statements to him.

Gov't. Ex. 344. (June 4, 1943. Letter from Secretary of R. E. Oakland to Bieze of Yellow—)

In our phone conversation today Mr. Oakland instructed me to send you the enclosed green book on Cab Sales and Parts Corporation.

Gov't. Ex. 345. (July 5, 1945. Letter from Knox to Oakland—)

I am sending under separate cover two copies each of the black book, yellow book and green book, pertaining to operating statistics of the cab industry in Chicago for 1944.

One set of books is for Mr. Markin and I would appreciate it if you would see that he receives them. The other set is for you.

I would like to have you return to me the following: One black book with 1943 statistics which you have, and one book each of the black, yellow and green which Mr. Markin has. You can ask Mr. Markin for this set and maybe assist him in locating them.

Gov't. Ex. 346. (October 30, 1945. Letter from Bieze of Yellow to Markin—)

As per our telephone conversation, I am enclosing herewith two photostatic copies of the "Brown Book".

Inasmuch that we had only one copy photostatic copies were made and I thought you might want an additional copy.

Gov't. Ex. 347. (September 5, 1941. Letter from Samuels of Yellow to Oakland of CCM—)

In view of the strenuous regulations by the Priorities Division of the United States Government, naturally, we are considerably worried as to whether or not we shall be in a position to obtain new taxicabs during the coming year.

In view of this situation, we would like to inquire whether there is a possibility of exchanging 395 Model Y cabs and trading them in on the purchase of 395 Model A 2392 cabs of the same type and specifications as delivered under our last order. Naturally, we would also like to inquire what the price will be, if you find that you are in a position to supply these cabs.

Inasmuch as it is important that we be in a position to determine a course of action in connection with these cabs for the year 1942, will you be good enough to answer this inquiry as soon as possible.

Gov't. Ex. 348. (September 6, 1941. Letter from Oakland of CCM to Samuels of Yellow—)

This will acknowledge receipt of your letter of September fifth.

All of our present production has now been delivered or committed for. Some time ago, we anticipated that we would be able to sell more cabs than our present program called for and we contacted all of our suppliers to ascertain if we could obtain the necessary materials. Due to the priorities occasioned by the defense program, we found that it would be almost impossible for us to go into any additional program for the building of taxicabs, because the inability to get just one item would prevent us from manufacturing or delivering any taxicabs.

Some time ago we accepted an order from the Cab Sales and Parts Corporation, of Chicago, for two hundred taxicabs, for delivery beginning during the month of September. Inasmuch as these cabs have not as yet been delivered, it is quite possible that you may be able to negotiate with them and obtain a part of their order. We will be very happy to do anything we can to assist you.

Gov't. Ex. 349. (September 8, 1941. Letter from Samuels to Oakland—)

I hasten to answer your letter of September 6th, because of the importance of arriving at some definite program in connection with the matter of additional cabs.

In view of the statement in your letter about the 200 taxicabs on order for Cab Sales & Parts Corporation in Chicago, would you be good enough to use your good offices to ascertain from that Company whether they would be willing, upon some basis, to be mutually agreeable to split that order with our Company. My reason for this suggestion is that I feel you are in a much better position to broach the suggestion than if it were to come from this Company direct.

If for any reason you feel that it would be impossible for you to act as a negotiator in this particular situation, please be good enough to advise us so that we may determine upon some other course of action.

2203 *Gov't. Ex. 350. (September 9, 1941. Letter from Oakland to Samuels—)*

This will acknowledge receipt of your letter of September 8th. I will be in Chicago Thursday morning to discuss with you the proposal under which Cab Sales and Parts Corporation will be willing to relinquish part of their order for taxicabs with us to you.

Gov't. Ex. 351. (September 11, 1941. Letter from Vice President of CCM to Samuels—)

This will confirm our understanding of today. Cab Sales and Parts Corporation agrees to relinquish one hundred (100) of its order for two hundred (200) taxicabs with us, and we will deliver these one hundred cabs to you with delivery starting the latter part of this month, at the same price and terms as your previous order, namely:

Taxicab	$1,420.00
Driveaway	7.50
3½% Excise Tax	49.70
Total	$1,478.70

If the present excise tax on automobiles is increased before delivery, the price will be correspondingly increased.

If these terms and conditions are acceptable, please indicate your acceptance on the line hereinbelow provided for that purpose. Also please advise us the numbers which you wish to have placed on these cabs.

Gov't. Ex. 352. (November 26, 1934. Minutes of Directors' Meeting of Parmelee—)

The Chairman then stated that Mr. Morris Markin, through a corporation controlled by him, was negotiating for the sale or other disposition of Checker Taxi Company

and its affiliated organizations to Yellow Cab Company of Chicago, Illinois. He further stated that this Corporation had not only a substantial stock interest in Chicago Yellow Cab Company, Inc., a New York corporation, which in turn owned all of the capital stock of Yellow Cab Company, but also had a management contract with Yellow Cab Company whereunder this corporation rendered managerial and advisory services to Yellow Cab Company. He further stated that this Corporation employed Mr. Morris Markin at a salary for the purpose of assisting it in the performance of this management contract with Yellow Cab
2204 Company. The Chairman further stated that he was a director of Chicago Yellow Cab Company, and that he had made a preliminary survey of the respective operations in Chicago of the taxicab fleets of Checker Taxi Company and of Yellow Cab Company, and in his opinion a purchase by Yellow Cab Company (either by way of consolidation, merger, or acquisition of stock or assets, or otherwise, as determined by the Board of Directors of Yellow Cab Company with the approval of their counsel) would be advantageous and for the best interests of Yellow Cab Company, not only because of the elimination of aggressive competition, but also because of the operating economies and reorganization of operating methods which would result from the amalgamation of the two fleets, provided that such purchase or other acquisition could be effected on reasonable terms without the payment of a substantial amount of cash. The Chairman then stated that in view of the facts he recited and the relations of Mr. Markin to this Corporation because of his employment, and because of his official position in Checker Cab Manufacturing Corporation, a majority stockholder of this Corporation, he deemed it advisable for the Board of Directors to consider whether or not it was the sense of the Board to consent to the consummation of such an acquisition, or to oppose it. The Chairman then added that Messrs. Chadbourne, Hunt, Jaeckel & Brown, general counsel of this Corporation, had been requested by Mr. Markin to represent him in the consummation of any such acquisition, and that Messrs. Chadbourne, Hunt, Jaeckel & Brown had requested that the Board of Directors consent to their so acting before they accepted any retainer from Mr. Markin.

After a full and complete discussion of the matters brought to the attention of the Board by the Chairman, the following resolutions were, upon motion duly made and seconded, unanimously adopted:

RESOLVED that this Corporation authorize and consent to the acquisition by Yellow Cab Company of Chicago of the business of Checker Taxi Company and its affiliated organizations, either by purchase of assets or stock, consolidation, or in any other manner deemed advisable by the Board of Directors of Yellow Cab Company, provided that such acquisition be consummated upon such terms and conditions as the Board of Directors of Yellow Cab Company deem advisable and for the best interests of said company.

FURTHER RESOLVED that this Corporation makes no objection to the conduct of negotiations and or sale by Morris Markin, either directly or through a corporation controlled by him, of the business of Checker Taxi Company and its affiliated organizations.

FURTHER RESOLVED that this Corporation consents to the acting by its general counsel, Messrs. Chadbourne, Hunt, Jaeckel & Brown as attorneys of Morris Mar-
2205 kin or of any corporation directly or indirectly controlled by him, in connection with any proposed disposition of the business of Checker Taxi Company and its affiliated organizations, and this Board of Directors hereby authorizes Messrs. Chadbourne, Hunt, Jaeckel & Brown to so act, as this Board of Directors recognizes that the interests of this Corporation may be served thereby in connection with the consummation of any such acquisition by Yellow Cab Company.

Gov't. Ex. 353. (October 6, 1936. Letter from Oakland of CCM to C. P. G. Fuller—)

After discussing the proposed consolidation of Checker Taxi Company and Cab Sales and Parts Corporation with Mr. Markin, Bat Nelson and Mike Sokoll, we have decided as follows:

That Cab Sales & Parts Corporation increase their capital stock from 1,000 shares to 100,000 shares.

That the minority stockholders in Checker Cab Company be given 40 shares of the new Cab Sales and Parts Corporation stock for 25 shares of the Checker Taxi Company stock.

That the consolidation be effected prior to December 31, 1936.

That Checker Taxi Company change their name so that Cab Sales and Parts Corporation can change its name to Checker Taxi Company after consolidation.

That the licenses issued by the City of Chicago shall be purchased and paid for by the new Checker Taxi Company.

It is probable that Mr. Markin will purchase my stock in Cab Sales and Parts Corporation prior to the consolidation. However, if this is not done I will take my proportionate share in the new company.

Will you kindly get in touch with Mike Sokoll immediately to make arrangements to hold the meeting of Checker Taxi Company for the approval of this consolidation?

Gov't. Ex. 354. (October 13, 1936. Letter from Oakland to Fuller—)

I presume that you realize that if we consolidate Checker Taxi Company and Cab Sales and Parts Corporation, that the resultant Company will have a deficit. This is arrived at as follows:

2206

Cost of Checker Taxi Company on Cab Sales books	$1,104,139.79
Less capital and surplus of Checker Taxi Company	303,982.78
Net amount	800,157.01
Capital and surplus Cab Sales & Parts Corporation	487,157.92
Deficit of new Company	312,999.09

In order to avoid showing this deficit on the balance sheet of the new Company, it is my suggestion the Board of Directors place a valuation on their goodwill and set it up in surplus and charge the loss on the liquidation of the Subsidiaries against this amount. It is my opinion that this goodwill should be just more than sufficient to take care of the deficit of the Company. For instance, they might capitalize the 1500 licenses at $250.00 apiece which would make their goodwill $375,000.00 and leave a net worth of the Company of $62,000.91.

Will you kindly give this matter some thought and advise me regarding your conclusions?

Gov't. Ex. 355. (August 12, 1938. Letter from Fuller to Rank—)

I have been considering further the suggestions that we discussed yesterday with respect to the proposition to have the Yellow Cab Company sell its taxicabs to Chicago Yellow Cab Cab Company and have Chicago Yellow thereupon lease the taxicabs to the Yellow Cab Company at a substantial rental, it being intended thereby to obtain for

Chicago Yellow through the rental virtually all of the profits of Yellow Cab Company from its operation. This, it is stated, would accomplish the following results:

(1) There would be no double Federal income tax payable on such earnings inasmuch as said earnings would not be taxed to Yellow and then declared out as dividends and then taxed to Chicago Yellow.

(2) In the event of any municipal investigation from the point of view of rates or otherwise the operating statements of Yellow would show a loss and thereby answer any arguments for a reduction in rates.

2206A (3) In the event of any labor request for an increase in wages the operating statements upon investigation would show a loss which would tend to answer any demand for increased wages.

With respect to (1) above, it would seem to me possible that the double taxation might be avoided. However, I call your attention to Section 45 of the Internal Revenue Act of 1938 which permits the Commissioner of Internal Revenue to allocate gross income as between the two corporations if he wishes to correctly reflect the income of each of them. I believe it possible that any Internal Revenue Agent, if the plan were adopted, might well consider the plan's primary purpose to avoid a double taxation and therefore justify a reallocation. In such an event the possible advantage from (1) above would be lost.

With respect to (2) above it would seem to me that, in any municipal investigation, the leasing arrangement would be immediately brought to the attention of the investigators, and further inquiry would be made to Chicago Yellow as to the income from the leasing agreement. It would seem highly probable therefore that in such an investigation not only would the rental be disregarded in toto but the plan itself would be looked upon with suspicion and the resulting antipathy towards the company would be extremely detrimental to any position it might take; and any investigator would doubtless challenge the good faith of any financial statements presented.

My comments with respect to (2) above are equally applicable to (3) in a lesser degree. I appreciate the fact that labor leaders will probably not examine the records of the company or have the power to examine the records of Chicago Yellow. If, however, the plan is discovered by the labor leaders in any such negotiation their reaction would be doubtless similar to that of any municipal in-

vestigator. I need not add that in any such municipal investigation or labor negotiation should the plan be discovered the Chicago Press would doubtless give it much unfavorable publicity and use the plan as an example of the business methods detrimental to the interests of the public and of labor, used by the company.

There are other objections to the plan which I believe might well be touched upon, namely:

(a) If the plan were carried into effect it would require the qualification of Chicago Yellow in the State of Illinois, thereby subjecting the company to a substantial franchise tax and entrance fee, which would probably be greater than any income tax saving obtained. This franchise tax is one-twentieth of 1% of the proportion of stated capital and surplus used in the business represented by property located and business transacted in the state. The amount of this tax, of course, I cannot estimate without knowing the gross rentals to be received under any such
2207 leasing agreement. Needless to say, there would be no reduction in the amount of Yellow Cab Company's franchise tax by reason of the lease as the tax is based on gross business and not on net income. Furthermore any qualification would place the Chicago Yellow under the jurisdiction of the State of Illinois and would require the production of whatever books and records of Chicago Yellow that may be subpoenaed in any investigation that may be made of its affairs. Such books would disclose not only the income from the leasing agreement, but also dividends received from companies engaged in transacting a gasoline or insurance business with Yellow Cab Company.

(b) The leasing of the cabs would represent a substantial change in the nature of the business, which would require suitable reports of such change to the New York Stock Exchange and the Securities and Exchange Commission. Such reports are public documents and would doubtless be available to any municipal investigator and immediately to the press.

(c) At the present time Chicago Yellow pays a franchise tax in New York under the holding company provision, the same being Section 188. A leasing arrangement, such as has been described, would make the Chicago Yellow a business corporation with the purview of Article 9(a) of the tax law. This tax under 9(a) is substantially heavier than that under Section 188, with the result that such change

would doubtless effect a larger franchise tax in New York than the savings in Federal income tax would warrant. It is impossible to estimate such a franchise tax without knowing the amount of rentals proposed to be received.

(d) While I assume that there would be no license fees if the cabs are sold to Chicago Yellow as such sale would doubtless take place at the end of a license period, it is to be remembered that there is a 3% Illinois sales tax which would be applicable to the sale. This tax would amount to $15,000 if the sales price were $500,000, so the tax can be seen to be substantial in a transaction of the kind contemplated. Furthermore the expense of repainting the name of the operator on the cabs would be substantial.

(e) I have always been extremely doubtful as to the liability for public liability claims of lessors of taxicabs and I believe that such public liability for accidents would be extended to the lessors under an affiliated company leasing arrangement. Although I am expressing no opinion as to the effect of the Illinois law on the subject, I believe that such a leasing arrangement would make the assets of Chicago Yellow subject to the claims of any plaintiff whose judgment for injuries was not adequately covered by insurance.

(f) It would seem to me that under the leasing arrangement described there would be an assignment of hack licenses under the Chicago ordinance to Chicago Yellow as the lessor might well be considered the licensee. This
2298 would not only create an additional expense but immediately call the attention of the City Council to the transaction, which is undesirable. If the lessee is the licensee a disclosure of his interest as lessee would also have to be made, which would also inform the City authorities of the arrangement. In either case the franchise of the Yellow Cab Company under the Chicago ordinance might be jeopardized.

I am of the opinion that whatever advantages might be gained by the transaction, the fundamental objection to it lies in the fact that there is no sound business reason for a lease; consequently the impression is immediately given that the leasing is for an improper purpose. I might also add that it is my recollection that the powers of Chicago Yellow, as granted in its Certificate of Incorporation, do not specifically authorize it to engage in the business of leasing taxicabs, and in any event the Board of Directors of Chicago Yellow in assuming the responsibility for changing the nature of the business might well first obtain

the approval of their stockholders at a special meeting, at which the powers of Chicago Yellow might be enlarged by stockholders voting an appropriate amendment.

I need not state that I am writing you this letter simply for the purpose of having you personally receive my ideas in confidence and it is, of course, not to be considered as an official letter to the above Company.

Gov't. Ex. No. 356. (Journal of the Proceedings of the City Council of the City of Chicago, Illinois. Regular Meeting, Wednesday, September 25, 1929, at 2:00 P. M.—)

[p. 1067] Amendment of the Regulations Governing the Licensing of Taxicabs

The Committee on Local Transportation, to whom had been referred (June 26, 1929, page 627) an ordinance for amendment of the regulations governing the licensing of taxicabs, submitted a report recommending the passage of said ordinance.

• • •

The following is said ordinance as passed:

Be it ordained by the City Council of the City of Chicago:

Section 1. That the following paragraphs be added to Chapter LXXXV of The Chicago Municipal Code of 1922, under Article 1, to be known as Section 3916-A:

2209 "Paragraph 1. No taxicab license, as hereinafter defined, shall hereafter be issued unless the Public Vehicle License Commission, as hereinabove created, after a hearing, shall by resolution declare that public convenience and necessity require the proposed taxicab service for which application for a license is made;

Provided that such declaration of public convenience and necessity shall not be necessary;

(a) For the licensing of the same number of taxicabs licensed for operation and operated by the applicant under the same name and colors on the 15th day of September A. D. 1929, or the renewal of the same number of licenses annually thereafter; or

(b) For the renewal of licenses to the applicant for the number of taxicabs of the applicant, for which the said Public Vehicle License Commission shall have at any time prior to the date of application for such renewal, made a declaration of public convenience and necessity.

Paragraph 2. In determining whether public convenience and necessity require the licensing of such taxicabs for which application may be made, the Public Vehicle License Commission shall take into consideration whether the demands of public convenience and necessity require such proposed or such additional taxicab service within the City of Chicago; the financial responsibility of the applicant; the number, kind, type of equipment, the schedule of maximum rates proposed to be charged, the color scheme to be used by the applicant; the increased traffic congestion and demand for increased parking spaces on the streets of the City which may result, and whether the safe use of the streets by the public, both vehicular and pedestrian, will be preserved by the granting of such additional license, and such other relevant facts as the Public Vehicle License Commission may deem advisable or necessary.

Paragraph 3. Any applicant for a taxicab license, under the provisions of this article, shall make proper application therefor on blanks to be furnished by the Public Vehicle License Commission, and immediately upon the filing of such an application, the Public Vehicle License Commission shall cause a notice to be published in one of the leading daily newspapers of the City of Chicago, which said notice shall be paid for in full by the applicant, and which said notice shall set forth the fact that the certain application has been filed for a taxicab license, the name of the applicant, kind of equipment and all other information from the said application, which said Public Vehicle License Commission may deem necessary, and notifying all holders of existing taxicab licenses that a public meeting will be held at a public place in the City of Chicago, to be designated by the Public Vehicle License Com-
2210 mission, at a time not less than five days nor more than fifteen days after the date of the first publication of said notice and said notice is to be published for three successive days. All holders of existing taxicab licenses shall thereupon be entitled to file any complaints and protest that said holders may see fit. At the time of the holding of the investigation and hearing, with reference to whether the public convenience and necessity require the operation of such additional vehicle or vehicles covered in the application, the Public

Vehicle License Commission shall consider all of the complaints and protests, and in conducting its hearings, shall have the right to call such witnesses as it may see fit. In all of such hearings the burden of proof shall be upon the applicant to establish by clear, cogent and convincing evidence which shall satisfy the said Public Vehicle License Commission beyond a reasonable doubt, that public convenience and necessity require such operation of the vehicle or vehicles for which the said application has been made.

Paragraph 4. If the Public Vehicle License Commission finds from its investigation and hearing that the public convenience and necessity justify the operation of the vehicle for which license is desired, it shall notify the applicant of its finding. Within 60 days thereafter, the applicant shall furnish to the Public Vehicle License Commission any and all additional information which may be required, and if the said Public Vehicle License Commission then finds that the applicant is the owner and bonafide operator of the vehicle for which license is desired, and that such vehicle complies with all of the ordinances of the City of Chicago, and all of the rules and regulations enacted by the Public Vehicle License Commission, license shall thereupon be issued to the said applicant upon the payment of the proper license fee.

If the Public Vehicle License Commission finds from such investigation and hearing that the public convenience and necessity do not justify the operation of the vehicle for which license is desired, it shall forthwirth notify the applicant of said finding.

Paragraph 5. The applicant shall regularly and daily operate his or its licensed taxicabs during each day of the licensed year to the extent reasonably necessary to meet the public demand for such taxicab service. Upon complete abandonment of taxicab service, for a period of ten consecutive days by an owner or operator of taxicab service, the Public Vehicle License Commission, upon hearing after five days notice to the said owner or operator shall thereupon recommend to the Mayor of the City of Chicago that the license of such owner or operator shall be revoked covering such taxicabs of the said owner or operator."

Section 2. This ordinance shall be in force and effect from and after its passage.

2211 *Gov't. Ex. No. 357. (January 22, 1934. Memorandum from Markin to Hogan, et al.—)*

With respect to the application of the Zone Cab Company of Cleveland for a Certificate of Necessity and Convenience covering the operation of taxicabs in Pittsburgh, I am convinced that the best interests of our company will be served by placing on our local representatives the responsibility for conducting the opposition to the above application.

At my request, Mr. C. K. Robinson agreed to assume this responsibility and to take full charge of the opposition to the application; it being understood that Mr. Robinson will receive unlimited cooperation from the Parmelee organization, and the aid of such members of Parmelee's personnel, together with all information, that Mr. Robinson believes may be useful to him will be immediately available at his request.

It was further agreed that all newspaper statements and such other public announcements as may be necessary will be made in the name of Mr. P. L. Houston as President of one or both of the local companies, and Parmelee and Parmelee's known representatives will be eliminated from the public picture insofar as it is possible.

Gov't. Ex. No. 358. (April 17, 1934. Letter from Rank to Bieze with attachments consisting of letter dated April 20, 1934 from Bieze to Rank, draft of proposed notice to stockholders, memorandum dated April 14, 1934, from E. M. S. to Rank, and newspaper clipping.—)

[4/17/34-Rank to Bieze] The statement of the Chicago Yellow Cab Company as published in the New York Times of April 14th is, in my opinion, detrimental to the efforts that you are making to obtain an increase in rates in Chicago and also detrimental to the taxicab situation in other cities. I think the release should have said something about the extraordinary volume of business that you did during the World's Fair. I know that the statement as published will be interpreted by uninformed persons as an argument for low rates.

I know there is very little use in talking about an already accomplished fact. However, I just want to record my view of the matter which I wish you would pass along to your associates.

2212 [4/20/34-Bieze to Rank] Answering your letter of April 17, 1934, with reference to Annual Report of Chicago Yellow Cab Company, Inc., I wish to inform you that the matter suggested therein had been carefully considered by us and we had intended issuing some sort of a statment in connection with our quarterly report, which is now available.

In keeping with that suggestion, we have drafted such a statement and submitted same to Mr. Markin, and are enclosing copy of same which was sent to him today.

If you will be good enough to give us your reaction, it will be very much appreciated.

[Draft of proposed notice to stockholders]

To the Stockholders of Chicago Yellow Cab Company, Inc.:

We are pleased to advise you that on Thursday, April 19th, your Board of Directors voted its regular dividend of 25¢ per share, payable June 1st, 1934, to stockholders of record May 21st, 1934.

In keeping with the policy of the company, we are maintaining our dividend as we have maintained it throughout the depression, although substantially all of this dividend will be paid out of surplus.

Due to the unusual conditions prevailing in Chicago during the period of the World's Fair in 1933, there was a tremendous amount of short haul patronage, which resulted in an unusual low percentage of unpaid miles traveled as compared with paid miles traveled. This enabled the Yellow Cab Company, one of our subsidiaries, to earn substantial profits during the Fair.

Our losses from the operation of taxicabs since the close of the Fair are as follows:

November,	1933	$25,179.62
December,	1933	$23,452.68
January,	1934	$22,648.97
February,	1934	$34,579.84
March,	1934	$36,857.76

Although these losses were sustained through the operation of taxicabs, Chicago Yellow Cab Company, Inc., reports that the profits earned by its other subsidiaries and from investments amounted to a sufficient sum to wipe out the above loss for the first quarter of 1934 and resulted in a net profit of $23,369.77.

The experiences of the taxixcab operating company were brought on by a taxicab rate war in Chicago which commenced the middle of last July and has demonstrated that during ordinary business conditions, it is impossible for any

taxicab operation to properly maintain itself on the rates of fare which have prevailed, because this low rate of fare has not created a sufficient volume of business to justify itself.

2213 Every operator of taxicabs in Chicago has now finally admitted that the present rates of fare must necessarily result in operating losses and the employees of all companies in Chicago have petitioned the City Government for increases in the rates of fare. We have called the attention of the Public Vehicle License Commission, which has jurisdiction over the taxicabs of Chicago, to the serious situation which now prevails, which is the direct result of this low rate of fare and we hope that within the near future, our City Council will enact legislation to remedy this situation.

[4/14/34—Memorandum from E. M. S. to Rank] This statement of Yellow Cab in this morning's Times does not fit in with the poor-mouth cry about the rates. My suggestion would have been that when this statement was given out a supplemental statement should also have been made on the same subject, pointing out the shrinkage in earnings since last fall. Information like this is seized upon by the proponents of low cab rates and the place where they get their information generally is from the financial pages of the newspapers.

[Newspaper Clipping] *Chicago Yellow Cab.*

Special to The New York Times

Chicago, April 13—The Chicago Yellow Cab Company, Inc., reported today for 1933 a consolidated net profit of $508,889 in comparison with $624,408 in 1932. Net income from operations was $1,403,363, but depreciation was $884,140. Other income was $96,690. The provision for the Federal income tax was $84,875. After deduction of additional Federal income tax for 1930 and prior years, with interest, all amounting to $38,760, and payment of dividends, the surplus stood at $4,941,415 on Dec. 31, 1933.

Gov't. Ex. No. 359. (June 21, 1934, Minutes of Directors' Meeting of Yellow—)

Present:	Thomas B. Hogan	Joseph J. White
	Benjamin Samuels	Paul E. Keller
	R. H. Bieze	Frank D. Fulton
		Ralph E. Stouffer

constituting the entire Board of Directors.

Mr. Thomas B. Hogan, the President of the corporation, acted as chairman of the meeting, and Mr. R. H. Bieze, the Secretary of the corporation, acted as secretary.

* * *

Upon motion duly made, seconded and carried, it was

RESOLVED by the Board of Directors of Yellow Cab Company, a Maine corporation licensed to do business under the laws of the State of Illinois, that the following ordinance adopted by the City Council of the City of
2214 Chicago on May 18, 1934, be and the same is hereby approved and accepted for and on behalf of this corporation:

The following is said ordinance as passed:

An Ordinance

Granting permission and authority for the operation of taxicabs within the city and for the appointment of a public vehicle license commissioner.

Be it ordained by the City Council of the City of Chicago:

Section 1. Whenever used in this ordinance:

(a) the word "city" means the City of Chicago;

(b) the word "council" means the City Council of the City of Chicago;

(c) the word "taxicab" means any public passenger motor vehicle equipped with a taximeter and licensed as a taxicab;

(d) the word "taximeter" means any mechanical device which records and indicates a charge or fare measured by distance traveled, waiting time and extra passengers;

(e) the word "licensee" means every person, firm or corporation owning any taxicab and having filed with the City Clerk formal written acceptance of this ordinance, and

(f) the word "commission" or "commissioner" means the body or officer having supervision over taxicab operations in the city.

Section 2. Subject to the conditions and limitations of this ordinance, permission and authority are hereby granted to the licensees to operate taxicabs upon the public streets and other public ways within the corporate limits of the city for the term ending December 31, 1940 unless sooner terminated or revoked as hereinafter provided.

Section 3. In addition to all license fees every licensee shall pay to the city quarter-annually in advance the sum of $12.50 for each taxicab of the licensee as compensation for the use of the streets and other public ways by authority of this ordinance. The compensation herein provided for shall be paid on the first day of January, March, July and October of each calendar year, provided that every licensee who shall accept this ordinance in the year 1934 shall be obligated to pay said compensation beginning as of July 1, 1934 as if this ordinance had been accepted by said licensee on July 1, 1934.

Section 4. The council from time to time may establish by a general ordinance just and reasonable rates and charges uniform as to all taxicabs operated within the city. No licensee shall charge, demand, collect or receive greater or less or different rates of compensation for the service of said licensee than those established or fixed from time to time by a general ordinance. Every person shall be entitled to the service of the licensee at the established rates and charges between any two points within the corporate limits of the city.

2215 Upon acceptance of this ordinance and until such time as the council shall establish by a general ordinance other rates and charges for the transportation of passengers and their baggage by taxicabs the licensee agrees to abide by the following schedule of rates and charges, which is hereby declared to be just and reasonable:

For the first one-third of a mile or fraction thereof for one person	15 cents
For each additional two-thirds of a mile or fraction thereof for one person	10 cents
For each additional person of the age of twelve years or more for the whole trip	5 cents
For each three minutes of waiting time or fraction thereof	10 cents

* * *

Section 6. Nothing in this ordinance shall be construed to limit the city in the exercise of its police powers and the city hereby expressly reserves the right to pass all ordinances and make all regulations affecting the licensee which may be deemed necessary to promote or secure health, safety, morals, comfort, convenience and general welfare; provided, however, that no ordinance or regulation shall authorize the issuance of any license for a

taxicab nor shall any such license hereafter be issued except upon transfer to permit replacement of a taxicab or in the annual renewal of such license unless the commission, after a hearing, by resolution shall declare that public convenience and necessity requires additional taxicab service and privided further, that no license for a taxicab hereafter shall be issued or re-issued upon transfer or in the annual renewal of such license unless and until the applicant for such license shall have accepted this ordinance.

In determining whether public convenience and necessity requires the licensing of any taxicab the commission shall take into consideration:

1. the demand for such service;
2. the effect on traffic congestion;
3. whether the safe use of the streets for vehicular and pedestrian traffic will be impaired;
4. the financial responsibility of the applicant and the amount of reserves to be established for the payment of personal injury, death ad property damage claims;
5. the wages or other compensation to be paid to or received by the driver of such taxicab;
6. the color scheme and character of equipment and
7. any other facts which the commission may deem relevant.

2216 The commission shall hold public hearings from time to time for the purpose of considering any objections or evidence pertinent to the question of the public convenience and necessity for the issuance of licenses for taxicabs. Notices of such public hearings containing the time and place thereof and the names of applicants for licenses shall be published in the official newspaper of the city. The commission may continue any public hearing from time to time without notice by publication.

Section 7. Every taxicab shall be operated regularly to the extent reasonably necessary to meet the public demand for taxicab service. In the event that the service of any taxicab is discontinued excepting on account of strikes, acts of God or causes beyond the control of the licensee the commission may give written notice to the licensee to restore such taxicab to service and, if the same is not so restored within five days after such notice, the commission, in its discretion, may recommend to the mayor that the license for such taxicab be revoked and the mayor, in his discretion, may revoke same.

Section 8. For the purpose of enabling the city to inform itself as to the character and quality of service rendered the public and just and reasonable uniform rates of fare to be fixed from time to time by the council and for determining whether the licensee is maintaining adequate reserves to meet personal injury, death and property damage claims, the city and the commission shall have access to the plant, equipment, apparatus and other property and the inventories, books, papers, accounts and records of all property and operations of the licensee at all reasonable times. Every licensee, at all times, shall keep in the city complete and accurate books and records of all property, operations, receipts and disbursements, in such form and detail as may be prescribed from time to time by the commission. Every licensee shall file with the commission semi-annually, before the first day of March and before the first day of September in each year, a true statement of all assets and liabilities, gross earnings, operating expenses and income of the licensee for the preceding six months ending December 31 and June 30, respectively and, whenever called upon by the city or the commission, shall file such other information as may be required by them or either of them. All statements required to be filed pursuant to this ordinance shall be sworn to by the licensee or the duly authorized agent of the licensee.

Every licensee shall file with the commission an address in the city to which all notices required to be given to the licensee under this ordinance may be addressed. All such notices shall be deemed good and sufficient for all purposes when deposited in the United States mail in a post paid envelope addressed to the licensee at the address on file with the commission.

2217 Section 9. In the event that the commission after investigation and hearing shall determine that any licensee has obtained any license for any taxicab by fraud or false representation or misstatement of fact pertinent to the question of whether public convenience and necessity required the issuance of such license or in case any licensee shall fail to carry out any promise made to the commission before the issuance of such license the commission may, in its discretion, revoke such license.

Section 10. In the event that any licensee shall make default in the observance or performance of any one or more of the agreements, conditions or obligations imposed

upon such licensee by this ordinance and if any such default shall continue for a period of ten days after written notice thereof from the commission to the licensee citing the alleged default on the part of the licensee then in each and every such case the commission shall report the facts to the council and, in addition to all other rights and remedies of the city in such case, the council may by resolution terminate the permission and authority hereby granted to such licensee and thereupon the mayor shall revoke all taxicab licenses held by such licensee.

Section 11. Immediately after this ordinance becomes effective the mayor, with the approval of the council, shall appoint a public vehicle license commissioner for a term of two years and until his successor is appointed and qualified. . . .

• • •

Section 12. In addition to the power and authority heretofore given by ordinance to the commission and also in addition to the power and authority hereinbefore given, but not in limitation thereof, the commission shall have the following powers and duties:

(a) to make such investigations as may be necessary for the establishment of just and reasonable rates of fare and to make recommendations thereon to the council;

(b) to recommend to the council the number, location and capacity of cab stands;

(c) to recommend to the council physical and mechanical standards for taxicabs and their appurtenances;

(d) to make such investigations as may be necessary and to recommend to the council measures for the prevention of accidents;

(e) to adopt such rules and regulations as it may deem expedient for the enforcement of the provisions of this ordinance, and

(f) to exercise such other powers and perform such other duties as may be prescribed from time to time by the council.

On or before the first day of April in each year the commission shall submit to the council an annual report
2218 of its transactions for the preceding calendar year, together with such recommendations as it may deem necessary or proper.

Section 13. This ordinance shall be in full force and effect from and after its passage, provided one or more

persons, firms or corporations shall within sixty days after the passage of this ordinance qualify as a licensee hereunder by filing with the city clerk formal written acceptance of this ordinance. The invalidity of any section or part of any section of this ordinance shall not affect the validity of any other section or part thereof.

FURTHER RESOLVED that in accordance with Section 13 of the foregoing ordinance, the President or a Vice President and Secretary or Assistant Secretary be and they are hereby authorized to sign and execute in the name and on behalf of this corporation and under its corporate seal a formal written acceptance of the aforesaid ordinance and to file the same with the City Clerk of the City of Chicago, Illinois, accepting said ordinance in the name and on behalf of this corporation.

Gov't. Ex. No. 360. (June 21, 1934. Minutes of Directors Meeting of Chicago Yellow—)

Present:	Benjamin Samuels	Paul E. Keller
	Thomas B. Hogan	Joseph J. White
	R. H. Bieze	Ralph E. Stouffer
	Frank D. Fulton	I. N. Nelson

constituting a majority of the Board of Directors.

Mr. Benjamin Samuels, President of the corporation, acted as chairman of the meeting, and Mr. R. H. Bieze, Secretary of the corporation, acted as secretary.

* * *

Upon motion duly made, seconded and carried, it was RESOLVED that the action of Yellow Cab Company in approving and accepting a certain ordinance granting permission and authority for the operation of taxicabs within the City of Chicago and for the appointment of a public vehicle license commissioner, adopted by the City Council of the City of Chicago May 18, 1934, and signed by the Mayor of the City of Chicago May 21, 1934, be and the same is hereby ratified, confirmed and approved.

Gov't. Ex. No. 361. (April 11, 1934. Letter from T. B. Hogan to Hinkel—)

I have your inquiry of April 9, 1934 with reference to Yellow Cab rates and wages paid to our drivers.

For your information it might be best that I mention various things that have taken place in Chicago dur-
2219 ing the past one and one-half years. In the first place, at various times we were attacked by some

one of the daily papers in Chicago, with reference to the high rates of fare and the rates at the time were:

25¢ for the first ¼ mile or fraction thereof,
10¢ for each additional ½ mile or fraction thereof, and
10¢ for each 3 minutes of waiting time or fraction thereof.

In most instances we presented our books to the various newspapers and they, after having made an examination of our books, were satisfied that in order to operate a successful business it would be impossible to reduce the rates of fare.

However, one of the newspapers failed to pay any attention to our books and took upon themselves to have daily editorials condemning the Yellow Cab Company for its high rates of fare and even went as far as to try and demoralize our drivers which was quite a handicap to try and overcome.

The City Officials in the meantime, in making its investigation and trying to come to a satisfactory arrangement of fare schedules, had eight groups of auditors make an examination of our books and records and came to the conclusion that it would be impossible for the Yellow Cab Company to reduce its rates and continue to be a successful company as Yellow Cab Company has been for the past twenty years.

While the City Council and Taxicab Commissions were making their investigation, a number of drivers employed by one of our competitors took upon themselves to attempt to start a company of their own known as the Stickers Club and they in turn decided to operate on the basis of:

15¢ for the first ⅓ mile or fraction thereof and
5¢ for each additional ⅓ mile or fraction thereof, and
5¢ for each 2 minutes of waiting time or fraction thereof and the drivers of the Stickers Club in the meantime had made terrific inroads into the business of Yellow Cab Company.

When this condition occurred, a rate war existed and therefore it was necessary for the Yellow Cab Company to operate at the same rate as the Stickers Club or it might have resulted in the Yellow Company losing all of its business. Therefore, we did not think it advisable to meet the rate of fare of the Stickers Club, but to adopt the lowest possible rate of fare which we thought would be:

10¢ for the first ⅔ mile or fraction thereof,
10¢ for each additional ⅔ mile or fraction thereof, and
10¢ for each 3 minutes of waiting time or fraction thereof.

When Yellow Cab adopted this rate the Stickers Club then started to operate on the basis of:

5¢ for the first 1/3 mile or fraction thereof,
5¢ for each additional 1/3 mile or fraction thereof, and
5¢ for each 2 minutes of waiting time or fraction thereof.

In the meantime the taxicab situation is a bad one as we as well as our competitors are suffering a terrific
2220 loss and it is now necessary that we appeal to the public through newspaper advertising, for an adjustment in rates of fare. We are not asking for the old rate of fare, but we feel that we are entitled to some small increase over the present rate of fare. What the new rate of fare will be is something that we are unable to state as after all we are more or less at the mercy of the newspapers and the City Officials.

• • •

We are more than pleased to submit the above information but we feel that same should be treated very confidential as we do not care to go on record of criticising the action of the City Council or any newspaper in Chicago.

Gov't. Ex. No. 363. (March 18, 1935. Memorandum from Rank to Markin—)

As per your telephone request today, I am enclosing herewith additional schedule. You will note that this schedule shows that the Yellow Cab Company can take the 500 additional cabs at the rate of $100.00 per month
2221 from December to April, inclusive and still maintain their bank balance at a minimum of $1,000.00.

In setting up the schedule handed to you on Saturday, we assumed that on May 1st the fleet would be reduced to 1500 cabs; that these 1500 cabs would earn the same total gross revenue and run the same total gross miles as would be run if the 2166 cabs had been continued in operation. In other words, it was assumed that the fleet would be double-shifted to a point that would offset the decrease in the number of cabs.

Gov't. Ex. No. 364. (August 16, 1935. Letter from Rank of Parmelee to Kirkland, Fleming, Green & Martin, with attachment consisting of letter dated August 16, 1935, from Rank to Board of Directors of Yellow—)

We are enclosing herewith a copy of our letter of even date addressed to the Board of Directors of Yellow Cab Company relating to the proposed reduction in the num-

ber of their licenses in connection with the contemplated revision in the present city ordinance in Chicago.

As operating managers of Yellow Cab Company and on behalf of the Board of Directors of that Company, we wish to request you to advise the Board of Directors whether, in your opinion, the City Council in Chicago may adopt an ordinance which permits the voluntary surrender or suspension of a portion of the licenses granted to any one operator with the mandatory provision in such ordinance, that should business conditions require the reissue of such surrendered or suspended licenses, such licenses upon demand of the taxicab operator would automatically be reissued to the operator surrendering the same.

Necessarily, the Board of Directors of Yellow Cab Company would like to be advised by you as to whether or not in the event of any such surrender, Yellow Cab Company could compel by appropriate proceedings the reissue of such licenses in the event business conditions require additional licenses in Chicago.

In connection with the foregoing, we believe the Board of Directors should be advised as to how much time would be required to enforce their rights in the appropriate courts should the city authorities refuse to reissue the suspended licenses upon demand.

[8/16/35, letter Rank to Board of Directors] This will serve as a confirmation of the opinion given by me verbally before the Board at the meeting held on Thursday, August 15th, to the effect that in my opinion under business conditions now obtaining, or that can be foreseen in the immediate future, Yellow Cab Company will not suffer a loss in gross business because of the reduction in its fleet from 2,165 to 1,750 cabs provided that the necessary adjustments are made in its operating schedules and cabs are not permitted to over crowd hack lines or cab stands. Consequently, I am in favor of an effort to secure an extension
2222 of the limitation ordinance or a possible franchise involving a reduction in the number of cabs to be allowed on the streets of Chicago, provided, again, that such ordinance will provide for a return to Yellow of any or all licenses surrendered by it in such numbers as may be deemed to be necessary by Yellow before any new licenses may be granted to other parties to operate taxicabs in the City of Chicago.

I would like, however, to have the opinion of counsel with respect to the legality and enforcibility of such a provision in a city ordinance. I would also like to have the opinion of

counsel as to the legal position of Yellow in the event that such a provision is written into the ordinance and the City of Chicago, or its official representatives, should refuse for one reason or another to reissue the licenses voluntarily surrendered by the Yellow Cab Company.

Gov't. Ex. 365. (September 19, 1935, Minutes of Directors Meeting of Yellow—)

Present: Thomas B. Hogan, Benjamin Samuels, R. H. Bieze, Paul E. Keller, Ralph E. Stouffer constituting a majority of the Board of Directors. Messrs. J. L. Kesner, Levin Rank, I. N. Nelson and Paul Houston, of the Board of Chicago Yellow Cab Company, Inc., and Mr. Howard Ellis, of the firm of Kirkland, Fleming, Green & Martin, and Mr. Morris Markin were also present.

* * *

The chairman thereupon referred to the informal discussion had at the last meeting of this Board, at which it was suggested that a new ten-year ordinance in the City of Chicago might be obtained providing for the reduction of Yellow Cab Company's licenses from 2166 to not less than 1500 nor more than 1750, without, however, reducing the licenses of competing companies at all. The advantage to this corporation would be the savings in license fees; such ordinance would provide that in case any additional licenses were granted, the parties voluntarily giving up licenses at the time of the passage of the new ordinance would have first call when and if additional licenses were granted in the City of Chicago. He stated that the Board had indicated its unwillingness to enter into such an arrangement without the legal opinion of General Counsel of the company as to the probable enforceability of such an ordinance.

Mr. Ellis of General Counsel thereupon stated that he had made an investigation of the right of Yellow Cab Company to enforce legally the terms of a proposed ordinance whereby if the number of licenses should ever be increased, Yellow Cab Company would have first call on the number of licenses taken away from it by the proposed reduction. He stated that it was his opinion that licensees relinquishing licenses in proportion to the proposed reduction could not legally force the city, upon reinstatement
2223 of the total number of licenses, to award such additional licenses to those relinquishing the same. He further stated that if the City Council in future years should amend this proposed ordinance by repealing that

part of it which has to do with the reissuance of licenses to all those relinquishing such licenses, Yellow Cab Company would be faced with long and costly litigation and that this litigation alone would amount to a practical deprivation of the company's rights, even though it should ultimately be successful in the litigation.

Upon motion duly made, seconded and carried, it was RESOLVED that no further consideration be given to obtaining a new taxicab ordinance in the City of Chicago for a ten-year or other period, which ordinance would provide that this corporation reduce its number of cabs and surrender a portion of its licenses, unless the competing cab companies in the City of Chicago agree with this company to reduce their number of cabs and licenses proportionately.

Gov't. Ex. No. 366. (September 19, 1935. Minutes of Directors Meeting of Chicago Yellow—)

The following directors were present:

Benjamin Samuels	Levin Rank
Thomas B. Hogan	Paul L. Houston
Ralph E. Stouffer	J. L. Kesner
R. H. Bieze	I. N. Nelson

constituting a majority of the Board of Directors. Mr. Paul E. Keller and Mr. Howard Ellis were also present.

Mr. Benjamin Samuels, President of the corporation, acted as chairman of the meeting and Mr. R. H. Bieze, Secretary of the corporation, acted as secretary of the meeting.

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The chairman stated that an informal discussion had been had at the last meeting of the Board of Directors of Yellow Cab Company, at which it was stated that it might be possible to obtain a new ten-year ordinance in the City of Chicago providing for the reduction of Yellow Cab Company's licenses from 2166 to not less than 1500 nor more than 1750, but without, however, reducing the licenses of competing companies at all . . .

Mr. Ellis of the firm of Kirkland, Fleming, Green & Martin thereupon stated that he had made an investigation of the right of Yellow Cab Company to enforce legally the terms of a proposed ordinance whereby if the number of licenses should ever be increased, Yellow Cab Company would have first call on the number of licenses taken away from it by the proposed reduction . . .

Upon motion duly made, seconded and carried, it was RESOLVED that the action of the Board of Directors of Yellow Cab Company in adopting the following resolution be and the same is hereby ratified, confirmed and approved:

2224 "RESOLVED that no further consideration be given to obtaining a new taxicab ordinance in the City of Chicago for a ten-year or other period, which ordinance would provide that this corporation reduce its number of cabs and surrender a portion of its licenses, unless the competing cab companies in the City of Chicago agree with this company to reduce their number of cabs and licenses proportionately."

Mr. Levin Rank and Mr. Paul Houston did not vote in favor of the resolution as adopted, but referred to Mr. Rank's letter of August 16, 1935, to the Board of Directors of Yellow Cab Company, and Mr. Ellis' written reply thereto. Mr. Houston stated that his opinion in reference to the foregoing matter was the same as Mr. Rank's opinion.

Gov't. Ex. No. 367. (June 14, 1937. Letter from Rank to Board of Directors of Yellow—)

In the early part of March of this year, the dissatisfaction of the drivers employed by the company, with respect to wages and working conditions, came to a head and resulted in a strike of some three or four weeks duration. The strike was finally settled by the signing of a contract running to December 31, 1938 with the International Brotherhood of Teamsters, an affiliate of the American Federation of Labor. This contract called for a closed shop, a straight 35% commission, the limination of charges for gasoline and required the company to provide, at its own expense, for washing and cleaning its taxicabs.

At the time this contract was negotiated, it was understood that the increase in rate of commission to be paid to drivers would not be sufficient to bring their earnings up to a point where they were comparable to the earnings of men engaged in other similar occupations in the City of Chicago, or with the earnings of taxicab drivers in other major cities where regulatory legislation similar to Chicago was in existence. For example: In Pittsburgh, where 100% of the licenses are controlled by a single interest, the drivers' wages in 1936 amounted to $3.76 per day per man; in Minneapolis, where 60% of the licenses are controlled by one interest, the drivers' wages in 1936 amounted to $3.08 per day per man; in Chicago where 30% of the

licenses are controlled by this company and its chief competitors, drivers' wages in 1936 amounted to an average of $2.25 per day per man; in New York, where no regulatory legislation existed until the spring of this year, taxicab drivers employed by the National Transportation Company were paid in 1936 an average of $2.50 per day per man.

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It was pointed out to the Union officials that the Company could not further increase the rate of commission to provide a satisfactory wage and at the same time remain in business. That other steps, such as an increase in the rate of fare, and/or a reduction in the number of operating units would have to be worked out in order to accomplish the purpose.

The Union officials, quite fortunately, were broad gauged and intelligent business men and agreed that the Company should have time to reconstruct its business to meet new conditions and succeeded in convincing the drivers that their first interests lay in the formation of a sound labor organization and that substantial increases in their earnings would come as the result of the establishment of such an organization under proper auspices.

It is estimated, on the basis of the revenues and operating costs for the year 1936, that the increase in drivers' commissions and in operating expenses, under the present contract with the Union, would result in increased operating charges of approximately $325,000.00. This, coupled with the fact that a substantial portion of the net income shown by the Company and its parent company on a consolidated basis for the year 1936 represented unusual and possibly non-recurring profits, leads me to the conclusion that, if the company had operated on the basis and at the labor costs under which it is now operating, applying in all other respects actual overhead costs and other charges, they would have realized a consolidated net income of approximately $200,000.00, instead of a net income of a little over $600,000.00.

In looking ahead to the future of the company, under new labor conditions, it seems unwise to rely on a straight 35% commission to drivers and to assume that there will be no increase demanded by other employees of the company. It is therefore expedient, in considering the future of the company, to presuppose a basis of at least 37½% commission to drivers and a general increase of 10% in wages to other employees. Under this wage structure, and as-

suming no change is made in the policy of the company, the operating costs would be further increased by the sum of $200,000.00 thereby wiping out entirely the company's present prospective earnings.

At the same time, the drivers' earnings, on a 37½% commission basis, would only be increased to $2.90 per man per day, and it can be expected that demands will be made for not less than a 40% commission, and in addition, a guaranteed minimum wage, such demands having been recently made and acceded to in other cities, including New York, Cleveland and Toledo. When such demands are made on the company, and in my opinion they will be made in the near future, the company will have no defense in
2226 paying a lesser rate of commission than that applicable in other cities, unless it can be shown, without fear of contradiction, that the average earnings of drivers in Chicago are equal to those of drivers in such cities paying the higher rate of commission.

It is quite obvious that the management cannot allow its present policies to continue without very definite and fundamental revisions and that both the officers and the management corporation must be prepared to offer to the Board of Directors, without loss of time, such plans for future operation as will, in their judgment, enable the company to meet its labor situation and at the same time continue to show a reasonable return to stockholders on the money which they have invested in the business.

The writer, being the principal officer of the management company, and in addition, a member of the Board of Directors of this company, has given considerable thought and study to the problem and is convinced that its solution lies in the reduction of the number of units operated by this company and its principal competitor. He further believes that the total number of such units operated should not exceed 2500 under existing circumstances; that every effort should be made to induce the City Council to amend the regulatory ordinance as a condition precedent to such a reduction in the number of operating units, so as to afford the maximum of protection to the company.

It is his further belief that negotiations should be immediately opened by the company with its chief competitor, looking toward effecting such a reduction and that such negotiations should be conducted with the view of having the company's chief competitor make such a reduction in its fleet as would restore the 60/40 ratio of operating units which existed at the time the present regulatory ordinance was put into effect.

Gov't. Ex. No. 368. (June 15, 1937, Minutes of Directors Meeting of Parmelee—)

Present: Levin Rank, R. J. Wyatt, Paul L. Houston; Walter S. Laird, and Charles J. Condon, being all of the Directors of the Corporation and a quorum.

Mr. Rank, President of the Corporation, called the meeting to order and presided thereat. Mr. Wyatt, Secretary of the Corporation, acted as Secretary of the meeting and kept the minutes thereof.

* * *

The Chairman then submitted to the meeting a proposed letter dated June 14, 1937, addressed to the Board of Directors of Yellow Cab Company, containing his recommendations with reference to the solution of several problems confronting Yellow Cab Company.

After a full discussion of the letter and of the recommendations therein contained, the following resolu-
2227 tions were, upon motion duly made and seconded, unanimously adopted:

RESOLVED that the form and substance of the letter dated June 14, 1937, addressed to the Board of Directors of Yellow Cab Company, proposed to be executed and delivered by Levin Rank, and the recommendations contained in said letter, be and the same hereby are in all respects approved, and that it is the sense of this Board of Directors that such recommendations are sound and should be adopted by the Board of Directors of Yellow Cab Company, and that Levin Rank be and he hereby is authorized, directed and empowered to execute said letter and file the same with the Board of Directors of Yellow Cab Company, and is further authorized to notify Yellow Cab Company that the recommendations therein contained are those of this Corporation and of all its individual Directors;

Gov't. Ex. 369. (June 16, 1937. Minutes of Directors Meeting of Yellow—)

The following directors were present:

Benjamin Samuels	Paul L. Houston
Thomas B. Hogan	Levin Rank
R. H. Bieze	Ralph E. Stouffer
	Walter S. Laird

constituting the entire Board of Directors, Raymond J. Wyatt and James A. King, Directors of Chicago Yellow Cab Company, Inc., were also present.

Mr. Thomas B. Hogan acted as chairman of the meeting and Mr. R. H. Bieze acted as secretary.

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Further discussion was had with reference to the plan of procedure submitted by Mr. Levin Rank and the plan submitted by officers of Yellow Cab Company.

Levin Rank, a Director of the corporation, then submitted to the meeting a letter dated June 14, 1937, addressed to the Board of Directors of this corporation, and stated that the recommendations contained in said letter had been unanimously approved by the Board of Directors of Parmelee Transportation Company.

After a full discussion of the recommendations contained in the letter of June 14, 1937, addressed to this Board of Directors by Levin Rank, the following resolutions were, upon motion duly made, and seconded, unanimously adopted:

2228 RESOLVED that the Executive Officers of this Corporation be and they hereby are authorized and directed to analyze and investigate the statements, suggestions and recommendations contained in the letter addressed to this Board of Directors by Levin Rank under date of June 14, 1937, and to confer with such municipal authorities as may be necessary to determine the feasibility of amending the regulatory ordinance to give effect to the suggested reduction in the number of taxicab licenses contained in said letter;

Gov't. Ex. No. 370. (June 23, 1937. Letter from Rank to Samuels of Yellow—)

I am more convinced than ever that we will be obliged to ask the Municipal authorities to amend the ordinance with respect to the number of taxicab licenses. In the circumstances, I feel it would be unwise to reduce our advertising appropriation at this time.

Will you kindly discuss this matter with the other officers and let me know how you and they feel about the matter.

Gov't. Ex. No. 371 (June 25, 1937. Letter from Samuels to Rank—)

Your letter in regard to advertising has just been received and in all probability it will be the best policy under present circumstances, to continue our present advertising appropriation until we definitely arrive at a conclusion to the contrary. This seems to be the idea of all the officers here.

Gov't. Ex. No. 372. (June 26, 1937. Letter from Samuels of Yellow to Board of Directors of Yellow—)

After the drivers' strike which was finally settled by the signing of a contract with the Teamsters Union, a number of lengthy discussions, by the Board of Directors, of the affairs of the company took place and it was decided that the officers should consider wages and operating conditions and submit a plan for consideration to the Board of Directors.

In accordance therewith the officers submit the following for consideration:

The wage situation on drivers is such that we shall have to look forward to some system of operation which will result in higher wages for the drivers, together with increases in wages to other employees. In order to bring about this result, it will be necessary to reduce competition among the cab drivers. This can only be done through a reduction in the number of cabs and drivers. The reduction in drivers should be on a seasonable schedule.

No reduction in the number of cabs is possible
2229 without action on the part of the City Council. At the present time, Yellow Cab Company owns 2166 licenses and operates 1650 of such licenses. Keeping in mind that the question of percentage of commission to the drivers alone is not the important factor and realizing that there are more than sufficient cabs in Chicago, we are of the opinion that recommendations should be made to the City Council that a pro-rata reduction of licenses be made by the two large companies.

At the present time there are 4108 licenses issued in Chicago. We are of the opinion that 3000 licensed cabs are sufficient to handle the cab business in Chicago. On the basis of a reasonable reduction of the licensed cabs in Chicago, Yellow could then have 1500 licenses and Checker 1000 licenses.

An increase of 5c on the flag pull together with a reduction of licensed cabs in Chicago is absolutely necessary to assure the drivers of a higher percentage on bookings and this can only be accomplished by favorable Council action.

• • •

We recommend that the average number of men per day during the summer should be 2000 and that the average number of men per day during the winter should be 2200. On the basis of an average of 2100 men per day throughout the year, the average pay per driver would be approximate-

ly $3.20 per day, which is based on the commissions as shown in Column B after having deducted $53,641.49 for drivers vacations.

Gov't. Ex. 373. (July 15, 1937. Minutes of Directors Meeting of Yellow—)

The following directors were present: Thomas B. Hogan, Benjamin Samuels, R. H. Bieze, Ralph E. Stouffer, Levin Rank, and Walter S. Laird, constituting a majority of the Board of Directors. Messrs. James A. King and Raymond J. Wyatt were also present at the meeting.

Mr. Thomas B. Hogan acted as chairman of the meeting and Mr. R. H. Bieze acted as secretary.

• • •

The Officers thereupon presented their revised plan of procedure in reference to wages and plan of operation.

Upon motion duly made, seconded and carried, it was

RESOLVED that the Secretary of the corporation be and he is hereby authorized and directed to insert in the minutes of this meeting a copy of the proposed plan of procedure in reference to wages and plan of operation submitted by the officers of this corporation.

2230 *Gov't. Ex. No. 374. (June 23, 1937. Letter from Rank to Scholz—).*

I notice in your "News Extracts" an item from the Chicago Tribune on June 16th, written by Martin P. Durkin, Director of the Illinois Department of Labor, in which it is stated that the earnings of cab drivers have, in the past, been notoriously low.

I do not suppose that the paper is in any way responsible for this article, but I rather think that you should drop in the American offices on your next visit to Chicago and point out to them that the companies are making every effort to adjust the wages of their drivers to meet present day standards.

Gov't. Ex. No. 375. (August 9, 1937. Letter from C.P.G. Fuller to "Ben" [Samuels of Yellow]—)

In examining the form of ordinance that you sent to me, I find that it is somewhat different than the ordinance which was shown to me last week. I assume that the proposed ordinance you sent to me is the one now before the City Council but I believe that my comments to Mr. Green are equally applicable to this revised form. It seems to

me, however, that a useful purpose would be served by the addition not only of the clauses you suggest in your letter but also a clause in Section 1, granting to present taxicab operators the privilege as a matter of right to renew their existing taxicab licenses even though such renewal after December 31, 1937, would mean that more than 3,000 licenses would be issued.

With respect to Mr. Ellis' memorandum to Mr. Thomas of August 5th, I have the following comments:

Paragraph 1. I agree with Mr. Ellis' opinion that the City Council cannot contract away the right to regulate the number of cabs. I do not see how any regulatory ordinance as such can be passed which vests in private companies property rights as distinguished from privileges and I believe that at any time the City Council could repeal the ordinance or extend it or modify it without first obtaining the agreement of the operating companies.

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Paragraph 4. I agree with Mr. Ellis that the proposed ordinance should definitely define the elimination of 1,000 cabs, provided that such elimination be accomplished voluntarily by licensees surrendering or abandoning licenses. I believe that any ordinance which would force any particular licensee to cancel his licenses while leaving other licensees with their present licenses would be discriminatory and void.

Paragraph 5. I think without question a preamble to the agreement between Yellow and Checker setting forth the reasons for the transaction should be inserted. Reference might well be made to the ordinance itself when it is
2231 passed or the proposed declaration of the Public Vehicle License Commissioner, and in addition a definite statement might be made with respect to the special method of operation of Checker as a cooperative and the resulting loss of revenue to Checker because of its voluntary surrender.

I note your comments with respect to your desire for a legal opinion from us as attorneys for Parmelee Transportation Company. In this connection, I wish to point out two things: First, as an attorney you can appreciate the fact that we cannot render opinions with respect to the application of Illinois law, not being Illinois attorneys, and all my comments both in this letter and in my letter to Mr. Green are subject to this qualification; and second,

while we are ready to render a legal opinion to Parmelee as your managers, such legal opinion would be controlled by the opinion of Mr. Green on the matter, as certainly no legal opinions should be filed that represent a conflict between Parmelee's attorneys and your general counsel.

Gov't. Ex. No. 376. (August 18 1937. Letter from Howard Ellis to Samuels—)

I am figuring over in my mind what would be the legal effect of an ordinance reducing the number of cabs on the Chicago streets to 3,000. Upon the assumption that such ordinance is valid and is not in abrogation of the contract ordinance of May 18, 1934, how would the reduction be affected and what would be the result so far as Yellow and Checker are concerned?

Of course, the whole thing depends upon the method of reduction. There are several theories under which the city could make the reduction and I wish you would have Bieze or somebody else advise me what the result would be on these theories, viz:

A. Reduction to be apportioned between present licensees of four or more cabs. I work it out that roughly Checker would bear 40% of the reduction and Yellow would bear 60% of the reduction. I should also like to see figures on the apportionment amongst licensees of ten or more cabs, or twenty or more cabs. You can see that if my figures are correct, the reduction of 500 by Checker and 650 by Yellow, being roughly 43½% and 56½%, is about the same as would be the legal reduction and, therefore, argument can be made that any substantial payment therefore would be a mere gift.

B. The second theory would be to renew 3,000 licenses in the succeeding licensing year to the first 3,000 licensees of the present year. Can you find out for me whether or not Yellow, Checker, both, or either, received their licenses amongst the first 3,000 licenses issued in the current license year?

C. Another theory might be to issue 3,000 licenses to present license holders who are the oldest in point
2232 of licensing. Can you find out for me whether Checker and Yellow are amongst the oldest license holders?

D. Another theory is "first come first served", that is, in the next licensing year 3,000 licenses would be issued to those who first applied for them. I take it the Yellow

would get as good a break as anybody else if this theory be pursued.

E. The final theory is that the licensing authorities would go into the services rendered by the licensees in the past and issue 3,000 to those best fitted to serve the public. Again I take it Yellow would have as good a break as anybody else under this theory.

If I have not made myself plain in this letter please give me a ring. I am quite anxious to get the information so that I can hand out an opinion as soon as possible for general office discussion before the meeting Friday.

Gov't Ex. No. 376(a). (August 27, 1937. Letter from Ellis to Chicago Yellow, Attention Samuels—)

You have asked our opinion regarding the right of the officers and directors of your company to enter into a contract with, and make a payment on behalf of your company to, the Checker Cab Company for a reduction on its part of its licensed cabs from the present number of 1500 to 1000, while Yellow, at the same time, reduces the number of its licensed cabs from 2166 to 1500, such contract and payment to be premised upon the passage by the City Council of the City of Chicago of an ordinance authorizing reduction of the total number of cabs from 4108 to 3000 upon terms, conditions and provisions substantially the same as those contained in the ordinance at present under consideration by the Transportation Committee of the City Council.

We have not been asked, and therefore express no opinion upon, the amount of consideration to be paid by your company to the Checker Cab Company, or whether or not, from a business viewpoint, the payment of any consideration by your company to the Checker Cab Company is warranted.

It has been suggested, and the City and taxicab operators have proceeded upon the theory, that the ordinance of May 18, 1934, accepted by the licensees thereunder, constitutes a valid and binding contract between each licensee and the City of Chicago for the combined licensees to operate 4108 cabs in the City of Chicago until December 31, 1940, upon the terms and provisions of the ordinance. It is our opinion that, notwithstanding such an interpretation of the ordinance of May 18, 1934, and the acceptances thereof, the City of Chicago, in the exercise of its police power (which

under no circumstances does it have power to contract away) for the public convenience and necessity can force the taxicab licensees to reduce the number of taxicab licenses at any time from 4108 to 3000. This is our
2233 construction of Illinois law, which we believe is in line with the weight of authority from other jurisdictions.

For the purposes of this opinion it must be assumed that the public health, safety, convenience and necessity, at the present time, demands that no more than 3000 taxicabs should be operated upon the streets. In the absence of such demand, and in the absence of a finding by the City Council of such public necessity, any contract by the licensees under the ordinance of May 18, 1934, to voluntarily reduce the number of taxicabs operated by them thereunder, would fall directly within the prohibition against restrictions in competition entered into by corporations affected with a public interest, condemned by the Illinois Supreme Court in the case of *South Chicago Railway Company v. Calumet Railway Company*, 171 Ill. 391. The proposed ordinance must, therefore, be based on a finding by proper municipal authority that public convenience and necessity requires that only 3000 cabs operate on the Chicago streets. So, also, the suggested contract between Yellow and Checker must be predicated upon the passage of such an ordinance.* (Footnote) This, likewise, is our interpretation of Illinois law, which, again, we believe is in accord with the weight of authority from foreign jurisdictions.

If it be conceded that our construction of Illinois law, as hereinabove set forth, is correct, still the general principles of contractual relationship must be resorted to that the validity of the proposed contract be determined. In order for the payment of money from your company to

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* *(Footnote)* An additional reason for our opinion, notwithstanding the construction placed upon the ordinance of May 18, 1934, by the City and the licensees, is that we are unable to find in such ordinance (assuming it to be a contract ordinance unchangeable without agreement of the parties) an express unequivocal grant to the licensees to operate 4108 cabs for the period involved. In no place is the minimum number of cabs mentioned. A grant of this sort, being in derogation of police power, must be strictly construed and will not be increased in scope by inference, intent or subsequent interpretation. For the licensees to have an irrevocable right to operate 4108 taxicabs until December 31, 1940, that right must be granted in plain, express and unequivocal terms. The findings of the Public Vehicle License Commission, appearing in the Journal of the City Council of the City of Chicago for April 27, 1934, at pages 2070-2071, and the subsequent interpretation by the interested parties of the ordinance of May 18, 1934, are, of course, make-weights against the conclusions of this footnote.

Checker to be legal, it is necessary that there be a legal consideration for such payment. In other words, Checker must relinquish something which it is not required to relinquish, or you must gain something which Checker is not required to give you. The amount paid Checker must be fairly commensurate, in your judgment as business-
2234 man, with the value of that voluntarily relinquished by Checker (which it would not otherwise have to relinquish) and with that gained by you (which you would otherwise not gain).

Since it is our opinion that (a) the City must find that no more than 3000 cabs may be operated on the streets, and (b) since the City therefore has the right and owes the duty to force licensees to reduce involuntarily the number of operated cabs to 3000, you are entitled to make a payment to Checker only if, by the suggested contract, it relinquishes more cabs than the City could legally force it to relinquish, or Yellow retains cabs which the City would otherwise be legally empowered to force it to give up. In other words, if the City, in the exercise of its police powers, owes the duty to force Yellow to reduce to 1500 cabs and Checker to 1000 cabs (the number provided in the suggested contract between Checker and you), you would not be warranted in making any payment to Checker. This principle necessitates consideration of the method by which the City would go about forcing a reduction.

It is our opinion that, in the exercise of such police power, the most equitable method by which the City could reduce the number of cabs operated under the ordinance of May 18, 1934, to 3000 would be to reduce the number of cabs operated by each licensee thereunder by approximately 25%. Other ways to effect this reduction may be conceived of, but on general principles of equality and uniformity this seems most appropriate.

In view of the circumstance that Yellow now hold 516 licenses which are not operated and for which no cabs are available for operation, and which licenses we are given to understand are subject in any event to cancellation for non-user, Mr. Levin Rank informs us that a pro rata reduction in the Yellow and Checker fleets would result in a reduction in the Yellow fleet of 275 and a reduction in the Checker fleet of 250, making a total reduction in the Yellow and Checker fleets of 1041, an additional reduction of 51 licenses being made in the combined fleets of independent licensees, a gross reduction of 1108. If Mr. Rank's

figures be accurate, Yellow stands to lose 791 licenses as compared with a 250 loss by the Checker Taxi Company. The contemplated agreement provides for a total reduction in Yellow's licenses of 666 as compared to a total reduction in the Checker fleet of 500. By a forced reduction, therefore, Yellow would lose 791 licenses, as compared to 666 voluntarily surrendered by contract. Checker, by a forced reduction, would lose 250 licenses, as compared to 500 surrendered by contract. It is our opinion that, for this difference of 375 licenses, effected by a voluntary contractual reduction, as distinguished from an involuntary pro rata reduction, your company would be entitled to pay the Checker Cab Company a consideration commensurate with the value of such 375 license differential.

2235 Although it is our opinion, as already expressed, that Illinois law does not permit the City of Chicago to forfeit its police power with respect to the regulations of the number of taxicab licenses to be operated at any one time, and although we believe that the City can force the licensees to reduce the number to 3000 cabs, still such conclusion is not completely free from doubt. If we are incorrect in our conclusion, then an express holding by the City that public health, safety and convenience require that only 3000 cabs be operated, together with permission by the City for the licensees to voluntarily reduce to 3000, would give legal justification for a contract between Checker and Yellow as to the amount of reduction and therefore would import consideration for a payment by Yellow to Checker under general law. Under this theory the City cannot force the taxicab operators to reduce; therefore we see no reason why (assuming a prior finding of public health, safety and convenience and assuming a prior permissive grant of authority to reduce) the cab operators may not contract among themselves in this respect and make payments as consideration for entering into such contract. We again point out that in our opinion payment cannot be justified on this theory for it is our opinion that the City may require a reduction to 3000 cabs notwithstanding the ordinance of May 18, 1934; we have mentioned this uncertainty in the Illinois law only for the sake of more perfect accuracy.

We therefore advice you that, subject to the foregoing, the proposed contract between Checker and Yellow is valid, providing the payment by Yellow to Checker is fairly commensurate with the consideration received by you.

Gov't. Ex. No. 377. (September 15, 1937. Letter from Chadbourne, Hunt, Jaeckel & Brown to Parmelee—)

As operating manager of Yellow Cab Company, of Chicago, Illinois, you have submitted to us a proposed agreement to be executed by Yellow Cab Company with Checker Taxi Company of Chicago and with Cab Sales & Parts Corporation, providing, *inter alia*, for the surrender of certain licenses by Checker Taxi Company and the acquisition of certain rights by Yellow Cab Company. You have also submitted to us a copy of the proposed ordinance to be adopted by the City Council of the City of Chicago supplemental to and amendatory of the taxicab regulatory ordinance of May 18, 1934, for the purpose of providing for the reduction by licenses in the number of taxicab licenses within the City of Chicago to 3,000 in the manner therein described. You have asked us whether we are of the opinion that said proposed agreement when executed by Yellow Cab Company and the other parties thereto, subject to the adoption of said ordinance, represents a valid and legally enforcible contract in accordance with its terms.

2236 In reliance upon the opinion of August 27, 1937, of Messrs. Kirkland, Fleming, Green, Martin & Ellis, attorneys, of the City of Chicago, Illinois, addressed to Chicago Yellow Cab Company, Inc., with reference to the effect of the laws of Illinois on the proposed transaction and with respect to the particular Illinois statutes having reference thereto, we wish to advise you as follows:

The proposed amendatory ordinance, by declaration and by its provisions, relieves licensees in Chicago of the public duty to operate in the aggregate more than 3,000 licenses. The operation, therefore, of licenses in excess of that number is permissive rather than mandatory on the part of the licensees, and consequently the licensees have the right but not the obligation to operate such licenses. Inasmuch as they have the right but not the obligation to so operate, they have the right to discontinue the operation of the excess licenses without the violation of any public duty, and as the ordinance does not require or compel the surrender thereof they may be compensated for surrendering such licenses as such surrender does not prevent the performance of any duty they are legally obligated to perform. Furthermore, the proposed contract provides that should public necessity, safety and convenience require the operation of additional licenses, the contracting parties are not prohibited from fulfilling the future duty created by such public necessity,

safety and convenience. We are, therefore, of the opinion that the holding in *South Chicago City Railway Company v. Calumet Electric Street Railway Company*, 49 N. E. 576, is not applicable to the transactions proposed to be consummated under the proposed agreement submitted.

We are, accordingly, of the opinion that, upon the adoption of an ordinance in the form submitted to us, the form of agreement proposed to be executed by Yellow Cab Company imposes no obligations on Yellow Cab Company which are illegal and which Yellow Cab Company may not properly perform within the purview of existing Illinois statutes. We are of the further opinion that the proposed agreement, upon the adoption of said proposed ordinance, when duly executed, will be a valid and legally enforcible contract and that it is not illegal for Yellow Cab Company to enter into and perform the same.

We wish further to point out that the original ordinance of May 18, 1934, was effective only upon the acceptance of its terms by any one of the then existing licensees, and that, accordingly, said ordinance was in the nature of a "contract" ordinance, that is to say, it purported to vest in licensees not only the revocable privilege to operate taxicabs in the City of Chicago but also, in our opinion, a property right to operate taxicabs until December 31, 1940, irrevocable except for cause. While we are not of the opinion that such ordinance of May 18, 1934, represents a contract in strict legal definition or that the rights granted thereunder represent a franchise in the ordinary
2237 contemplation of the term, and while we are not of the opinion that the City Council of Chicago have divested themselves of their regulatory or police powers by the adoption of such ordinance of May 18, 1934, we are of the opinion that the ordinance of May 18, 1934, does vest in licensees certain property rights of which licensees cannot be deprived without their consent, and that any licensees may be compensated for executing an acceptance of the proposed ordinance submitted to us, which would effect the relinquishment and surrender of a part of said property rights. Inasmuch as the proposed agreement provides for the acceptance by Checker Taxi Company of the proposed ordinance, which in turn divests Checker Taxi Company of certain of its said property rights under the ordinance of May 18, 1934, Yellow Cab Company in executing the proposed agreement, in our opinion, is agreeing to compensate Checker Taxi Company for the surrender in part of its said property rights.

We are, accordingly, of the opinion that any agreement providing for the payment of adequate compensation to Checker Taxi Company for the relinquishment in part of its property rights under the May 18, 1934 ordinance is not illegal but is valid and enforcible in accordance with its terms.

We wish to add that we do not express any opinion with respect to the adequacy of the consideration flowing from Yellow Cab Company to Checker Taxi Company inasmuch as we assume that the Board of Directors of Yellow Cab Company has fully canvassed the advantages of the transaction and deems the consideration therefor reasonable and proper under all the circumstances.

2238 *Gov't. Ex. No. 379. (August 30, 1937. Letter from Samuels to Ellis—)*

I have read over the rough draft of agreement as outlined and believe that you have failed to catch one of the most important parts of this agreement; namely, that this credit upon the outstanding Cab Sales & Parts notes is to be applied upon the notes as they mature in the order of their maturity and that all of the credits are to be applied quarterly on the 1st day of January, March, July and October in each year, at the sum of $, per quarter based upon the fact that Checker Taxi Co. has shown to Yellow that all of the licenses, which it is supposed to have given up, have been given up and are no longer in operation, and that their fleet is down to the sum of 1000 cabs.

In the event that they have failed to reduce to the 1000, then the proportionate credit is to be reduced at the
2239 rate of $ for each and every licensed cab which it has failed to take off the street.

In other words, the agreement contemplates that the credit is only to be given quarterly until the full amount of credit as specified in the contract is completed and, secondly, the amount of each sum credited depends specifically upon the number of actual licenses given up and the performance of their agreement to get down to the sum of 1000 cabs in full.

I would also suggest that some clause be embodied to the effect that no credit at all is to be given until they have proved, to the satisfaction of Yellow, that they have given up and are no longer operating the greater number of licensed cabs and licenses in proportion to the number given up by Yellow, because the matter of this credit depends upon

the fact that Checker is giving up a much larger proportion of its licensed cabs than Yellow is giving up.

I hope that I make this clear—if not, please consult me and the original memorandum left with Mr. Green.

Gov't. Ex. No. 389. (August 31, 1937, Letter from Ellis to Samuels, with attachment consisting of rough draft copy of proposed Yellow-Checker contract—)

Enclosed is a rough-draft copy of the Yellow-Checker contract, including the suggestions made by Mr. Fuller and yourself. You must understand, of course, that the form of this agreement cannot be considered final in any respect.

[Rough draft of contract—]

Mr. ELLIS: (Not to be taken as final in any particular)

Rough Draft of
YELLOW-CHECKER CONTRACT

(Incorporating Suggestions of Messrs. Samuels and Fuller)

This Agreement, made this day of , A. D. 1937, by and between Chicago Yellow Cab Company, Inc., a New York corporation, hereinafter called Chicago Yellow, and Yellow Cab Company, a Maine corporation, hereinafter called Yellow, on the one hand, and Cab Sales & Parts Corporation, a Delaware corporation, hereinafter called Cab Sales, and Checker Taxi Company, a Delaware corporation, hereinafter called Checker, on the other hand, Witnesseth that:

Whereas, the City Council of the City of Chicago, on May 18, 1934, duly passed a certain ordinance, a copy of which is attached hereto, made a part hereof, and marked "Exhibit A", by the terms of which the number of taxicab licenses in the City of Chicago was limited in effect to 4,108 until December 31, 1940, the City Council at that time finding that, in the interests of public convenience and necessity, the number of taxicab licenses should be fixed in that number until December 31, 1940; and

2240 Whereas, Yellow and Checker duly accepted, in writing, the terms of such ordinance in accordance with the provisions thereof, and thereby Yellow secured to itself, subject to the provisions of such ordinance, the right to hold, own and operate, and does so hold, own and operate, 2166 of such taxicab licenses, and thereby Checker secured to itself, subject to the provisions of such ordinance, the right to hold, own and operate, and does so hold, own and operate, 1500 of such taxicab licenses; and

Whereas, Yellow is not at the present time, and has not for a period of more than ninety days, operated 516 of the licenses owned by it, nor has it had equipment available for the purpose of exercising the rights and privileges conferred on it by reason of such 516 licenses, and therefore Checker maintains that each of such 516 licenses is immediately subject to forfeiture on complaint to the Mayor of the City of Chicago, in accordance with the provisions of the ordinance of May 18, 1934, and Yellow's acceptance thereof; and

Whereas, the Public Vehicle License Commission of the City of Chicago has reported to the City Council of the City of Chicago that public convenience and necessity demands an immediate reduction in the number of taxicab licenses from 4,108 to not more than 3,000, and has made a finding to that effect, and the City Council of the City of Chicago has agreed to such finding, and also so found, and, in pursuance of such findings, passed on the day of 19 , an ordinance, a copy of which is attached hereto, made a part hereof, and marked "Exhibit B", which ordinance provides that in the event that a sufficient number of taxicab licenses shall be voluntarily surrendered by licensees under the ordinance of May 18, 1934, to reduce the number of taxicabs within the City of Chicago to 3,000 on or before December 31, 1937, no taxicab licenses shall thereafter be issued except upon transfer to permit replacement of a cab or in the annual renewal of any taxicab license or upon assignment of any taxicab license, as thereinafter provided, or upon revocation for cause or termination in any other manner; and which also provides that licensees under the ordinance of May 18, 1934, who shall voluntarily surrender any taxicab licenses, or their right to renewal of any taxicab licenses, shall have the right to new taxicab licenses in lieu of the number of taxicab licenses surrendered by them, which right shall be prior to the right of any other person, firm or corporation who shall apply for any taxicab licenses, and which right may be exercised whenever public convenience and necessity require that more than 3,000 taxicab licenses be operated in the City of Chicago; and which further provides that each taxicab license, and the right to apply for such license, shall be assignable subject to the power of the City of Chicago to determine the qualifications of the assignee to a taxicab license; and

Whereas, the parties, in the interests of and to promote the public convenience and necessity, are desirous of

2241 securing a reduction in the number of taxicab licenses in the City of Chicago to not more than 3,000, and feel that they, as distinguished from other licensees under the ordinance of May 18, 1934, are best situated to accomplish such a reduction; and

Whereas, Checker is engaged in a method of taxicab operation which entails the operation of taxicabs by individual drivers and others for their own account, whereunder the operators pay a fixed monthly fee under drivers' contracts and the parties recognize that the reduction in the number of licenses would cause Checker to cancel a number of drivers' contracts which, in turn, would result in a substantial loss of revenue to it; and

Whereas, Checker is unwilling to accept the provisions of said ordinance of , 1937, and the rights and obligations thereunder or to waive and relinquish any of its rights under the ordinance of May 18, 1934, without compensation therefor; and

Whereas, Checker and Yellow made certain verbal arrangements for the compensation of Checker for certain losses suffered by Checker as a result of the taxi drivers' strike in Chicago of 1937; and

Whereas, Yellow is desirous of accepting the provisions of said ordinance of , 1937, and the rights and obligations thereunder, and Checker is desirous of accepting said ordinance but only on the terms and provisions of this agreement; and

Whereas Chicago Yellow owns one hundred per cent, of the capital stock of Yellow and Cab Sales owns ninety-eight per cent, of the capital stock of Checker; and

Whereas, Chicago Yellow owns certain Ten-Year 6% Collateral Trust Gold Notes of Cab Sales, which notes are numbered from 23 to 68, both inclusive, and are each in the denomination of $5000, they being of a total face value of $230,000 and maturing on May 1, 1941, subject, however to certain of such notes being redeemable prior to that date by Cab Sales, all of which notes are owned, subject to the provisions of a certain collateral trust agreement at The First National Bank of Chicago under its Trust No. 177221; and

Whereas, Chicago Yellow owns certain 6% Collateral Trust Sinking Fund Gold Notes of Cab Sales, which notes are numbered from 10 to 40, both inclusive, and are each in the denomination of $5000, they being of a total face value of $155,000 and maturing on May 1, 1941, subject, however, to certain of such notes being redeemable prior to that date

by Cab Sales, all of which notes are owned, subject to the provisions of a certain collateral trust agreement at The First National Bank of Chicago under its Trust No. 177222.

Now, Therefore, for and in consideration of the premises and of the mutual promises, covenants and agreements herein contained, in consideration of One Dollar, each to the other in hand paid, receipt whereof is hereby acknowledged, and for other good and valuable consideration, It Is

2242 Hereby Mutually Agreed by and between the parties hereto as follows:

1. Checker promises and agrees as follows:

a) To relinquish to the City of Chicago to be cancelled 500 of the taxicab licenses now held by it on or before the day of , 19 , which 500 licenses shall be relinquished from that group of licenses owned by Checker and operated by driver-owned taxicabs, as distinguished from licenses used by taxicabs owned by Checker or by Cab Sales;

b) To sell and assign to Yellow the right to renew such licenses relinquished under paragraph 1.a) above immediately after each of such 500 licenses is relinquished without any consideration for such sale and assignment in addition to that hereunder given.

c) To effectively cancel drivers' contracts, and to save Yellow and Chicago Yellow harmless from any liability by reason of such cancellation, whereunder drivers operate such driver-owned taxicabs by virtue of the privileges granted by the 500 licenses to be relinquished as aforesaid;

d) To accept by appropriate instruments in writing all of the provisions of said ordinance of , 1937, coincident with the acceptance by Yellow of said ordinance.

2. Yellow promises and agrees as follows:

a) To relinquish to the City of Chicago to be cancelled 666 of the taxicab licenses now held by it, 166 of such licenses to be so relinquished on the execution of this contract and the remaining 500 to be relinquished at the same time or times and in the same amount or amounts as are the 500 licenses to be relinquished by Checker.

b) To accept by appropriate instruments in writing all of the provisions of said ordinance of , 1937, coincident with the acceptance by Checker of said ordinance.

3. Chicago Yellow promises and agrees as follows:

a) To cause Yellow to perform all of its promises hereinabove set out;

b) To pay to Cab Sales $ per license for each taxicab license relinquished by Checker up to 500 licenses

after each such license is relinquished and effectively cancelled, such payments, nevertheless, to be made in the form of credits to be authorized by Chicago Yellow and to be applied on the Ten Year 6% Collateral Trust Gold Notes and the 6% Collateral Sinking Fund Gold Notes of Cab Sales now owned by Chicago Yellow and held by The First National Bank of Chicago under collateral trust agreements, such credits to be applied according to the following provisions and conditions:

I.) No credits are to be made on such notes prior to January 1, 1938;

II.) After that date credits are to be made quarterly, on the first day of January, March, July and October of each calendar year, in the amount of $ per license for each license surrendered by Checker and effectively cancelled at such credit date;

2243 III.) The number of licenses surrendered by Checker and effectively cancelled at any credit date shall be determined by certificate from the then president of Checker as to such number, Chicago Yellow, however, before authorizing any credit, having the right to make an independent investigation in order to verify the truth of any such certificate and the right to adjust the credit to be given on any one credit date in accordance with the facts demonstrated by such investigation and with the terms of this Agreement;

IV.) At each credit date, Chicago Yellow shall determine the amount of credit that Cab Sales is entitled to under the terms and provisions of this Agreement, and shall authorize and direct that such amount of credit be applied to or toward the payment of whichever of the said gold note or notes then outstanding and owned by Chicago Yellow matures or mature earliest in point of time, so that all of such credit at any such credit date will first be applied to that outstanding note bearing the earliest maturity date, and if such credit is more than sufficient to retire such note, then the remainder of such credit will then be applied to that outstanding note which has the next earliest maturity date.

4. Cab Sales promises and agrees as follows:

a) To cause Checker to perform all of its promises hereinabove set out;

b) To pay to Chicago Yellow the notes above described according to the terms thereof.

5. Checker and Cab Sales hereby waive and release any rights or claims against Yellow by reason of any under-

standing or verbal arrangement made in connection with the settlement of the taxicab drivers' strike in 1937, and the entire agreement between the parties with respect to such settlement and with respect to the matters hereinbefore set forth is set forth in this agreement.

6. Any provision herein contained to the contrary notwithstanding, it is hereby stipulated and agreed that should the public interest require the issuance of additional licenses and the operation of additional taxicabs in the City of Chicago by reason of public health, safety, convenience or necessity or otherwise, the parties hereto shall not be prohibited by any clause or term of this Agreement from such additional service to the extent then permitted by law, and nothing in this Agreement contained shall limit or prohibit in any such event the furnishing of additional and extended services to the public by the parties hereto, to the extent that by regulatory ordinance, legislative enactment, order or otherwise, any duty or requirement is imposed upon them to so furnish such services.

7. The terms and provisions of this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

244 *(Alternative Provision to That of Paragraph 1.b)*

b) To sell and assign to Yellow the right to renew the first 33 of such licenses relinquished and canceled under paragraph 1.a) above immediately after such licenses are relinquished without any consideration for such sale and assignment in addition to that hereunder given.

* * *

(To be added, in the event of the use of alternative paragraph 1.b) before paragraph 6.)

5½. In the event that at any time subsequent to the execution of this contract the City Council of the City of Chicago determines that public convenience and necessity requires the issuance of taxicab licenses in addition to the number then outstanding and determines to issue additional licenses, the parties hereto hereby covenant and agree, so far as they are legally able, as follows:

a) Chicago Yellow and Cab Sales will not make application for or attempt to secure for themselves any of such additional licenses to be issued;

b) Yellow will apply for, and the parties hereto will attempt to secure for it, 60% of such additional licenses to be issued;

c) Checker will apply for, and the parties hereto will attempt to secure for it, 40% of such additional licenses to be issued;

d) That the total number of such additional licenses issued to Yellow and Checker shall be divided between them on the basis of 60% to Yellow and 40% to Checker.

Gov't. Ex. No. 381. (December 2, 1937. Letter from Rank to Samuels—)

With respect to the accompanying letter agreement, I think the last three lines of Paragraph #1 will have to be changed so as to permit operation by either Checker Taxi Company, or Cab Sales & Parts Corporation, or their successors, or wholly owned subsidiaries. I have nothing particular in mind, in making this suggestion as to successors or subsidiaries, except that I think Checker should be free to reorganize, combine or otherwise change their corporate set-up and to operate cabs with a new Company, if they so desire.

If it is your desire that I return the copies of the contract referred to above, I will be pleased to do so upon receiving advice from your office.

Gov't. Ex. No. 382. (December 7, 1937. Letter from Oakland to Sokoll of Checker—)

I discussed the Cab Sales—Yellow Cab contract with Mr. Markin and Mr. Rank and I am giving you herewith Mr. Markin's decision on the points which we had under discussion:

2245 1. Mr. Rank will have the letter changed so that Cab Sales and Parts Corporation will not be prohibited from applying for licenses.

2. The amount of bonds outstanding will be corrected.

3. Checker Taxi Company will sell 240 licenses to Chicago Yellow Cab Company although Checker Taxi will actually return them to the License Bureau for cancellation.

4. There will be no change in the provision for Yellow Cab Company deducting payments when licenses exceed 4,108 regardless of the cost.

I explained the disadvantages under the various possibilities and in spite of this effect Mr. Markin still refused to change the contract as it was his theory that the Yellow Cab Company could make no further payment on the can-

cellation of licenses if the outstanding licenses were permitted to exceed the amount which is presently outstanding.

Gov't. Ex. No. 383. (July 8, 1937. Letter from Sokoll to Rank, with attachment—)

I am transmitting herewith a list of the cabs withdrawn from service and statement of moneys lost by Checker because of their withdrawal. The amount due us is $6,833.03. Will you please have check forwarded to us?

Checker Taxi Company
1401 W. Jackson Blvd., Chicago, Illinois

Cabs Withdrawn from Service and Not Replaced April, May, and June, 1937.

Date	Cab No.	Shift	Loss of Revenue Single	Loss of Revenue Double
4/3/37	5295	Double		$68.00
4/3/37	4956	Single	$58.00	
		[130 additional cabs listed]		
			TOTAL JUNE, 1937	$ 8,448.08
			TOTAL MAY, 1937	4,034.65
			TOTAL APRIL, 1937	1,183.32
				$13,666.05
			Due Checker 50%	6,833.03

Gov't. Ex. No. 384 (Listing by Checker of Cabs Withdrawn from Service and not replaced April, May, June, July, August and September, 1937—)

2246

Checker Taxi Company
1401 W. Jackson Blvd., Chicago, Illinois

Cabs Withdrawn from Service and not Replaced April, May, June, July, August and September, 1937.

Date	Cab No.	Shift	Loss of Revenue for September Single	Loss of Revenue for September Double
4/3/37	5295	Double		$68.00
4/3/37	4956	Single	$58.00	
		[204 additional cabs listed]		
			TOTAL SEPTEMBER 1937	12,586.83
			TOTAL AUGUST 1937	11,664.00
			TOTAL JULY 1937	10,959.50
			TOTAL JUNE 1937	8,448.08
			TOTAL MAY 1937	4,034.65
			TOTAL APRIL 1937	1,183.32
			GRAND TOTAL	48,876.38

Gov't. Ex. 385. (December 28, 1937. Letter from Sokoll to Markin, with attachment—)

I am transmitting herewith a schedule showing the actual amount of revenue which Checker has lost due to retiring

cars under the interim agreement with Yellow from April 1, 1937 to and including November 30, 1937. I am also including the estimated revenue for December, using the November figure.

There will, of course, be some additional cars in the December schedule which can be accounted for later.

According to this schedule the amount due us is $44,081.05.

April, 1937	$ 1,183.32
May, 1937	4,034.65
June, 1937	8,448.08
July, 1937	10,959.50
August, 1937	11,664.00
September, 1937	12,586.83
October, 1937	12,869.41
November, 1937	13,208.15
December, 1937 (estimated)	13,208.15
Total	$88,162.09
Our Loss	$44,081.05

Gov't. Ex. 386. (Plaintiff's Interrogatory No. 25—)

To Checker. With respect to your denial of certain of the allegations of paragraph 42 of the amended complaint, state:

(a) Whether any sums were paid to Checker by reason of its withdrawal of taxicabs from service during
2247 1937, when each payment was made, and the payer making each payment;

(b) Whether any of such payments were made pursuant to an unwritten understanding;

(c) Whether any of such payments were made pursuant to a written understanding and, if so, the date, parties, and present custody of such understanding and copies thereof.

Gov't. Ex. No. 387. (Checker's answer to plaintiff's interrogatory No. 25—)

25. (a), (b), and (c): No,

2248 *Gov. Ex. 388 (Journal of the Proceedings of the City of Chicago, Illinois, Regular Meeting, Wednesday, December 22, 1937 at 2:00 o'clock P. M., Council Chamber, City Hall—)*

[5026, 5027]

Provision for a Decrease in the Number of Taxicabs to 3000, Extension of the "Franchise" Period to December 31, 1945, and Making of Taxicab Licenses Assignable.

Alderman Quinn presented an ordinance providing for a decrease in the number of taxicabs to 3,000, extending the "franchise" period to December 31, 1945, and making taxicab licenses assignable.

* * *

The following is said ordinance as passed:

WHEREAS, The Public Vehicle License Commissioner has reported the result of investigation of conditions prevailing in the operation of taxicabs within the city and has determined that public convenience and necessity require that the number of taxicabs within the City of Chicago be reduced to 3,000; and

WHEREAS, Certain licensees under the ordinance of May 18, 1934, have agreed to surrender a sufficient number of taxicab licenses to effect a reduction of the number of taxicabs within the City of Chicago to 3,000; now, therefore,

Be it Ordained by the City Council of the City of Chicago:

Section 1. In the event that a sufficient number of taxicab licenses shall be surrendered by licensees under the ordinance of May 18, 1934, to reduce the number of taxicabs within the City of Chicago to 3,000 on or before March 31, 1938, no taxicab license shall thereafter be issued except upon transfer to permit replacement of a taxicab or in the annual renewal of any such license or upon assignment of any such license or upon assignment of the right to apply for such license as hereinafter provided or upon revocation for cause or termination in any other manner of any such license.

Section 2. Notwithstanding Section 1 of this ordinance taxicab licenses in excess of 3,000 may be issued when authorized by general ordinance without consent of licensees under the ordinance of May 18, 1934: provided that such licensees who shall have voluntarily surrendered any taxicab licenses or their right to renewal of any taxicab licenses on or before March 31, 1938, shall have the right to such number of taxicab licenses as were so surrendered, and such right shall be prior to the right of any person, firm or corporation until such licensees who have so surrendered their taxicab licenses shall have either released their right to apply for taxicab
2249 licenses or shall have failed to make application therefor within thirty (30) days after publication of notice of public hearing upon the question of public con-

venience and necessity for the issuance of licenses for taxicabs as provided by ordinance. As between such licensees who have so surrendered taxicab licenses and who have not released or waived their right to apply for their substitution as herein provided such licenses shall be issued ratably in the proportion which the number voluntarily surrendered by each such licensee bears to the number voluntarily surrendered by all other such licensees.

Section 3. Each taxicab license or the right to apply for such license shall be assignable subject to the power of the City of Chicago to determine the qualifications of the assignee to such license. No taxicab license shall be issued to any assignee unless and until such assignee shall have assumed all liabilities of the assignor arising from the maintenance and operation of any taxicab.

Section 4. Subject to the conditions and limitations of this ordinance and an ordinance granting permission and authority for the operation of taxicabs within the city and for the appointment of a public vehicle license commissioner, passed May 18, 1934, and appearing in the Journal of the Proceedings of the City Council of that date at pages 2271 to 2273, both inclusive, the permission and authority granted to the licensees under said ordinance of May 18, 1934, to operate taxicabs upon the public streets and other public ways within the corporate limits of the city is hereby extended to December 31, 1945, unless sooner terminated or revoked as provided in said ordinance of May 18, 1934.

Section 5. Nothing in this ordinance shall be construed to abrogate or modify the ordinance of May 18, 1934, or any of its provisions except insofar as this ordinance is inconsistent with said ordinance of May 18, 1934, and except that the City Council may provide for the installation and operation of an electric call system for taxicabs for the purpose of reducing the number or capacity of cab-stands in the city.

Section 6. This ordinance shall be in full force and effect from and after its passage provided one or more licensee under the ordinance of May 18, 1934, shall within thirty (30) days after passage of this ordinance file with the City Clerk formal written acceptance of this ordinance and shall have surrendered at least 616 taxicab licenses.

2250 *Gov. Ex. 389 (December 29, 1937. Minutes of Directors Meeting of Parmelee—)*

The meeting reconvened pursuant to adjournment taken on December 17, 1937, for lack of quorum.

PRESENT: Levin Rank
Paul L. Houston
Walter S. Laird
Charles F. Condon
R. J. Wyatt

being all of the Board of Directors and a quorum.

Mr. Rank, President of the Corporation, called the meeting to order and presided thereat. Mr. Wyatt, Secretary of the Corporation, acted as Secretary of the meeting and kept the minutes thereof.

• • •

The Chairman then submitted to the meeting a form of contract to be dated as of January 3, 1938, between Yellow Cab Company, a corporation to which this Corporation acts as management advisors, and Checker Taxi Company and Cab Sales and Parts Corporation, and asked the Board of Directors to consider whether this Corporation as management advisors of Yellow Cab Company should approve the execution of said form of contract by Yellow Cab Company.

After full discussion of the form of contract presented to the meeting, the following resolutions were, upon motion duly made and seconded, unanimously adopted:

RESOLVED that this Corporation as management advisors of Yellow Cab Company approve the execution and performance by said Yellow Cab Company of a contract in substantially the form of contract to be dated as of January 3, 1938, between said Yellow Cab Company, Checker Taxi Company and Cab Sales and Parts Corporation submitted to this meeting, and the proper officers of this Corporation be and they hereby are authorized and empowered to notify Yellow Cab Company of such consent.

Gov. Ex. 390 (January 6, 1938. Letter from Fuller to Rank—)

I have prepared and enclosed herewith five copies of the revision of the Chicago Yellow-Checker contract. You will note that I have kept this at $550 per license but have provided for the payment of $45,000 upon the signing of the

contract as part of the consideration therefor. It seems to me that this is preferable to increasing the license payment to $640, not only from a tax but also from a policy
2251 point of view.

I return to you herewith the notes you sent me, the two telegrams, Bieze's letter and the printed form of ordinance. I also return to you herewith the contract prepared by Mr. Green's office, which contains my pencilled changes, and the two ordinances as exhibits.

As I am leaving tonight, I have not had a chance to personally check my revision of the contract but I believe you will find it all right.

Gov. Ex. 391 (January 3, 1938. Minutes of Directors Meeting of Checker—)

Present: M. M. Sokoll
George McDonald
A. C. Flynn
Jos. McMath
Julius Jesmer

being and constituting the entire Board of Directors of the company.

Mr. Sokoll, the President, called the meeting to order, and Miss Flynn, the Secretary, recorded the minutes thereof.

The President presented a contract between Yellow Cab Company, Cab Sales and Parts Corporation and this company, and a general discussion of the contract ensued.

Whereupon, on motion duly made and seconded, the following resolution was duly and unanimously adopted: Be it

RESOLVED: That the President and Secretary of this company be and they hereby are authorized, empowered and directed to execute and deliver the contract presented to this meeting; and be it further

RESOLVED: That the officers of this company be and they hereby are authorized and empowered to do any and all things necessary to fully carry out the intent and purpose of the contract.

Gov. Ex. 392 (January 3, 1938. Agreement between Yellow, Cab Sales, and Checker—)

THIS AGREEMENT, made as of the 3rd day of January, A. D. 1938, by and between YELLOW CAB COMPANY, a Maine corporation (hereinafter called "Yellow"), on the one

hand; and CAB SALES AND PARTS CORPORATION, a Delaware corporation (hereinafter called "Cab Sales"), and CHECKER TAXI COMPANY, a Delaware corporation (hereinafter called "Checker"), on the other hand,

WITNESSETH:

WHEREAS, the City Council of the City of Chicago, on May 18, 1934, duly passed a certain ordinance, a copy of which is attached hereto, made a part hereof, and marked "Exhibit A", by the terms of which the number of
2252 taxicab licenses in the City of Chicago was limited in effect to 4,108 until December 31, 1940, the City Council at that time finding that in the interests of public convenience and necessity the number of taxicab licenses should be fixed in that number until December 31, 1940; and

WHEREAS, Yellow and Checker duly accepted in writing the terms of such ordinance in accordance with the provisions thereof, and thereby Yellow secured to itself, subject to the provisions of such ordinance, the right to hold, own and operate, and does so hold, own and operate, 2,166 of such taxicab licenses, and thereby Checker secured to itself, subject to the provisions of such ordinance, the right to hold, own and operate, and does so hold, own and operate 1,500 of such taxicab licenses; and

WHEREAS, Yellow is not at the present time, and has not for a period of more than ninety days, operated 511 of the licenses owned by it, nor has it had equipment available for the purpose of exercising the rights and privileges conferred on it by reason of such 511 licenses, and therefore Checker maintains that each of such 511 licenses is immediately subject to forfeiture on complaint to the Mayor of the City of Chicago, in accordance with the provisions of the ordinance of May 18, 1934, and Yellow's acceptance thereof; and

WHEREAS, the Public Vehicle License Commission of the City of Chicago has reported to the City Council of the City of Chicago that public convenience and necessity demand an immediate reduction in the number of taxicab licenses from 4,108 to not more than 3,000, and has made a finding to that effect, and the City Council of the City of Chicago has agreed to such finding and has also so found and, in pursuance of such findings, has passed an ordinance, a copy of which is attached hereto, made a part hereof, and marked "Exhibit B", which ordinance provides that

in the event that a sufficient number of taxicab licenses shall be voluntarily surrendered by licensees under the ordinance of May 18, 1934, to reduce the number of taxicabs within the City of Chicago to 3,000 on or before March 31, 1938, no taxicab licenses shall thereafter be issued except upon transfer to permit replacement of a cab or in the annual renewal of any taxicab license or upon assignment of any taxicab license, as thereinafter provided, or upon revocation for cause or termination in any other manner; and which ordinance also provides that licensees under the ordinance of May 18, 1934, who shall voluntarily surrender any taxicab licenses, or their right to renewal of any taxicab licenses, shall have the right to new taxicab licenses in lieu of the number of taxicab licenses surrendered by them, which right shall be prior to the right of any other person, firm or corporation who shall apply for any taxicab licenses, and which right may be exercised whenever public convenience and necessity require that more than 3,000 taxicab licenses be operated in the City of Chicago; and which ordinance also provides
2253 that each taxicab license, and the right to apply for such license, shall be assignable subject to the power of the City of Chicago to determine the qualifications of the assignee to a taxicab license; and

WHEREAS, the parties, in the interests of and to promote the public convenience and necessity, are desirous of securing a reduction in the number of taxicab licenses in the City of Chicago to not more than 3,000, and feel that they as distinguished from other licensees under the ordinance of May 18, 1934, are best situated to accomplish such a reduction; and

WHEREAS, Checker is engaged in a method of taxicab operation which entails the operation of taxicabs under the taxicab licenses of Checker by individual drivers and others for their own account pursuant to "drivers' contracts" with Checker, under which contracts operators pay a fixed monthly fee, and the parties recognize that the reduction in the number of licenses would result in a substantial loss of revenue to Checker; and

WHEREAS, Checker is unwilling in view of its method of taxicab operation to accept the provisions of said ordinance (Exhibit B), and the rights and obligations thereunder or to waive and relinquish any of its rights under the ordinance of May 18, 1934, without compensation therefor; and

WHEREAS, Yellow is desirous of accepting the provisions of said ordinance (Exhibit B), and the rights and obligations thereunder and Checker is desirous of accepting said ordinance but only on the terms and provisions of this Agreement; and

WHEREAS, Yellow or its affiliated companies own or control certain Ten-Year 6% Collateral Trust Gold Notes of Cab Sales in the total face amount of $380,000 maturing on May 1, 1941, and certain 6% Collateral Trust Sinking Fund Gold Notes of Cab Sales in the total face amount of $150,000 maturing on October 1, 1942, such maturity dates being subject in each case to the retirement of certain of such notes prior to such dates by Cab Sales in the total face amount of $150,000 maturing on October 1, 1942, such maturity dates being subject in each case to the retirement of certain of such notes prior to such dates by Cab Sales (all of said notes being hereinafter referred to as "Cab Sales Notes"),

NOW, THEREFORE, for and in consideration of the premises and of the mutual promises, covenants and agreements herein contained, and in consideration of the payment of the sum of $45,000 by Yellow to Checker simultaneously with the execution and delivery of this Agreement, receipt whereof is hereby acknowledged by Checker, and for other good and valuable consideration, IT IS HEREBY MUTUALLY AGREED by and between the parties hereto as follows:

1. Checker promises and agrees as follows:

(a) to relinquish to the City of Chicago to be cancelled 500 of the taxicab licenses now held by it on or before the 31st day of March, 1938;

2254

(b) to accept by appropriate instruments in writing all of the provisions of said ordinance (Exhibit B) promptly after the execution and delivery of this Agreement, coincident with the acceptance by Yellow of said ordinance; and

(c) to sell, assign and set over to Yellow the right of Checker under said ordinance (Exhibit B) promptly after the execution and delivery of this Agreement, to renew and obtain the reissuance of 240 of said 500 licenses to be so cancelled by Checker hereunder.

2. Yellow promises and agrees as follows:

(a) to accept by appropriate instruments in writing all of the provisions of said ordinance (Exhibit B) promptly

after the execution and delivery of this Agreement, coincident with the acceptance by Checker of said ordinance; and

(b) to pay or cause to be paid to Checker, in addition to the $45,000 paid to Checker simultaneously with the execution and delivery of this Agreement, and in full payment for all of its covenants and agreements herein contained and for the performance of all of the acts to be performed by Checker hereunder and the loss of revenue resulting thereby, the sum of $550 per license for each taxicab license relinquished and effectively cancelled by Checker up to 500 licenses, such payments nevertheless to be made, at the option of Yellow, in the Cab Sales Notes in lieu of cash, such Notes to be accepted at principal amount and accrued interest; and such payments nevertheless to be made in twenty quarterly installments of $13,750 each, payable on the first days of April, July, October and January in each year, beginning on April 1, 1938 and ending on January 1, 1943; PROVIDED, HOWEVER, that in the event that at any time prior to April 1, 1943, more than 4,108 licenses are authorized for issuance by the proper municipal authorities in Chicago having jurisdiction in the premises, or if for any other reason taxicabs in excess of 4,108 are permitted to or do legally operate in the City of Chicago at any time prior to April 1, 1943, the obligation of Yellow to make any further payments hereunder shall forthwith cease and determine upon the happening of either such event and all payments hereunder shall thereupon cease, but neither Checker nor Cab Sales need account to Yellow for any payments made by Yellow hereunder prior to the happening of either such event, it being an express condition precedent to the obligation of Yellow hereunder that at no time while the quarterly payments herein specified are due and payable shall there be operating upon the streets of Chicago taxicabs in excess of 4,108; AND PROVIDED FURTHER, that on each and every quarterly payment date Yellow shall have the absolute right to make an independent investigation as to the number of cabs and licenses then owned and operated by Checker and
2255 as to the number of cabs and licenses owned and operated by Checker during the quarter year immediately preceding the quarterly payment date in question, and for the purpose of such investigation Yellow shall have, and Checker hereby promises to give, free access to all of the books and records of Checker, to the end that if Checker at any time subsequent to March 31, 1938 and

during the life of said ordinance (Exhibit B), holds and operates more than 1,000 taxicab licenses or such increased number as may be contemplated by the provision of paragraph 3 hereof, then and in that event all of the promises, covenants and agreements of Yellow hereunder shall immediately cease and be held for naught;

(c) in the event that Yellow elects to make any quarterly payment to Checker hereunder in Cab Sales Notes in lieu of cash, as hereinabove provided, such payments shall be made to Checker by the delivery of Cab Sales Notes in negotiable form or by the delivery to Checker of evidence vesting in Checker an undivided interest of the requisite dollar amount in Cab Sales Notes not delivered by reason of the principal amount thereof being greater than the dollar amount then payable. Checker agrees that it will subordinate all its claims as a creditor under the Cab Sales Notes when received hereunder to the claims as creditors of the holders of all other Cab Sales Notes not delivered to it pursuant to the terms hereof, and specifically agrees that it will not attempt to enforce, collect or demand payment of the Cab Sales Notes received hereunder by it unless and until all other Cab Sales Notes then outstanding shall have been fully paid, satisfied and discharged. Checker further agrees that when received by it hereunder, all Cab Sales Notes will be, upon the request of Yellow, or by the act of Yellow at Yellow's election, stamped with an appropriate legend bearing reference to this paragraph so that this covenant of subordination shall be binding upon any assignee of Checker or any transferee or purchaser from Checker of said Notes.

3. In the event that at any time subsequent to the execution of this Agreement the City Council of the City of Chicago, or other body having jurisdiction in the premises, determines that public safety, convenience and necessity require the issuance of taxicab licenses in addition to the number then outstanding but not in excess of the licenses surrendered pursuant to the terms of this Agreement and any licenses surrender by Yellow, and determines to issue additional licenses, Yellow and Checker hereby covenant and agree, so far as they are legally able to do so, as follows:

(a) Yellow will apply for, and the parties hereto will attempt to secure for it, 60% of such additional licenses to be issued; and

(b) Checker will apply for and the parties hereto will attempt to secure for it, 40% of such additional 2250 licenses to be issued; to the end that the total number of such additional licenses to be issued to Yellow and Checker shall be divided between them on the basis of three-fifths (3/5) thereof to Yellow and two-fifths (2/5) thereof to Checker.

4. Cab Sales promises and agrees to cause Checker to perform all of its covenants and agreements herein contained and hereby unconditionally guarantees such performance.

5. In consideration of the agreements of Cab Sales herein contained, Yellow agrees to cause the Trustee of the Cab Sales Notes and all of the present holders of Cab Sales Notes to execute, promptly after the performance by Checker of its obligations hereunder contained in paragraph 1 hereof, appropriate indentures of amendment to the existing trust indentures under which such Notes have been issued, providing in substance for the extension of the maturity date of all the Cab Sales Notes, including the serial maturity dates now fixed in the trust indentures as amended, to April 1, 1943, and for the reduction of the interest payable on the Cab Sales Notes from the amounts now fixed in the trust indentures as amended to the fixed rate of 3% per annum from January 1, 1938, until said maturity date as extended, such amendatory indentures to be in such form and to contain such other and further provisions as are customary and as may be approved by counsel for the parties hereto.

6. Any provision herein contained to the contrary notwithstanding, it is hereby stipulated and agreed that should the public interest require the issuance of additional licenses and the operation of additional taxicabs in the City of Chicago by reason of public health, safety, convenience or necessity, or otherwise, the parties hereto shall not be prohibited by any clause or term of this Agreement from furnishing such additional service to the extent then permitted by law, and nothing in this Agreement contained shall limit or prohibit in any such event the furnishing of additional and extended services to the public by the parties hereto, to the extent that by regulatory ordinance, legislative enactment, order or otherwise, any duty or requirement is imposed upon them to so furnish such services.

7. The terms and provisions of this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

IN WITNESS WHEREOF, each of the parties hereto has caused these presents to be executed by its President or its Vice-President, thereunto duly authorized, and its corporate seal to be affixed hereto, attested by its Secretary or its Assistant Secretary, the day and year first above written.

[Signatures on following page]

2257 (Seal) YELLOW CAB COMPANY
ATTEST:
s/ R. H. Bieze
Secretary.
By s/ T. B. Hogan
President.

(Seal) CAB SALES AND PARTS CORPORATION
ATTEST:
s/ A. C. Flynn
Assistant Secretary.
By s/ Jos. McMath
Vice President.

(Seal) CHECKER TAXI COMPANY
ATTEST:
s/ A. C. Flynn
Secretary.
By s/ M. M. Sokoll
President.

Gov. Ex. 393 (January 24, 1938. Minutes of Directors Meeting of Yellow—)

The following directors were present:

R. H. Bieze
Thomas B. Hagon
Paul L. Houston
Walter S. Laird
Levin Rank

constituting the entire Board of Directors. Mr. Ralph E. Stouffer, a member of the Board of Directors of Chicago Yellow Cab Company, Inc., was also present.

Mr. Thomas B. Hogan acted as chairman of the meeting and Mr. R. H. Bieze acted as Secretary.

• • •

The chairman thereupon requested the Secretary to read a contract dated as of January 3, 1938, between this corporation on the one hand, and Cab Sales and Parts Corporation and Checker Taxi Company on the other hand, in reference to the reduction in the number of taxicab licenses provided by the ordinance passed by the City

Council of the City of Chicago on the 22nd day of December, 1937, amending the ordinance passed May 18, 1934, and stated that the execution and performance of such contract by this corporation had been approved by Parmelee Transportation Company under its management contract, under which it advised this corporation concerning its management.

Upon motion duly made, seconded and carried, it was

RESOLVED that all of the terms and provisions of the Agreement presented and read at this meeting, between Yellow Cab Company, Cab Sales and Parts Corporation, and Checker Taxi Company, dated as of January 3, 1938, be and the same are hereby ratified, confirmed and approved, and the action of the President and Secretary of the corporation in signing and executing in the name and on behalf of this corporation and under its corporate seal said Agreement be and the same is hereby ratified.

2258 *Gov. Ex. 394. (August 17, 1939. Letter from Oakland to Markin, with attachment—)*

I am enclosing herewith a schedule showing the average number of cabs owned, average number of cabs operated, the revenue of cabs, and the percentage to total revenue of cabs operated in the Yellow and Checker fleets in the city of Chicago.

Up to December 1, 1937 Checker Taxi had licenses for 1500 cabs and operated practically all of them. The Yellow Cab Company had licenses for 2166 cabs but were only operating approximately 1600.

During the years 1935, 1936 and 1937 Yellow Cab Company received approximately 51% of the entire business done by these two companies. In January 1938 a contract was made between these two companies whereby Checker was to reduce its fleet to 1000 cabs, and Chicago Yellow to 1500 cabs, and Yellow Cab Company was to reimburse Checker $55,000.00 per year for a period of five years for this reduction in cabs.

As a result of this reduction in the number of cabs Yellow Cab increased their percentage of total business to over 55% in 1938, and it is estimated that in 1939 they will receive 61% of the business. This means their total revenue in 1938 was increased about $400,000.00 in the year 1938 and $900,000.00 in the year 1939.

It would appear from the above that the annual reimbursement to Checker Taxi for loss in revenue is far short of what it should be.

SCHEDULE SHOWING AVERAGE NUMBER OF CABS OWNED, AVERAGE NUMBER OF CABS OPERATED, REVENUE OF CABS AND PERCENTAGE TO TOTAL REVENUE ON CABS OPERATED IN THE YELLOW & CHECKER FLEETS IN THE CITY OF CHICAGO.

	Year	Yellow Cab Co.	Cab Sales & Parts Corp.	Checker Taxi Co.	Total
			CABS OWNED		
	1935	2166	288	1152	3606
	1936	2166	500	975	3641
	1937	2166	500	892	3558
	1938	1655	518	482	2655
Estimated	1939	1300	645	210	2155
			CABS OPERATED		
	1935	1838	288	1152	3278
	1936	1917	500	975	3392
	1937	1612	500	892	3004
	1938	1245	518	482	2245
Estimated	1939	1250	645	210	2105

2259 *Gov. Ex. 395. (No date. Letter from Laird of Parmelee Motor Fuel to Stouffer of Chicago Yellow—)*

I have just received the report of the Utilities Motor Fuel Company wherein I notice Chicago Yellow purchased 418780 gallons of gasoline and the Checker Cab Company purchased 294250 gallons. This makes a total of 713,030 gallons.

On this basis, Yellow Cab Company of Chicago used 58.7% of the gasoline and the Checker Cab Company 41.2% which shows Checker are getting better than their 60-40 percentage of the business.

In addition thereto, Checker Cab gets better miles per gallon out of their gasoline than the Yellow Cab Company which would show that they are getting a still further larger percentage of the business than the Chicago Yellow Cab Company.

As a matter of fact, the Checker Cab is getting 8.1 miles per gallon whereas Chicago Yellow only gets 7.79 miles per gallon or a difference of 35/100 miles per gallon which is almost 5% more mileage.

In taking all these things into consideration and also the fact that the Checker Cabs gets 19.34 cents per mile whereas Yellow of Chicago only gets 19.05 cents per mile, the final result is Chicago Yellow is getting 57.3% of the dollar volume of business compared to 42.7% for the Checker Cab.

I thought you might be interested in these figures and that is the reason I am sending them.

Gov. Ex. 396. (August 9, 1945. Letter from Bieze to Oakland, with attachment—)

With further reference to your letter of June 28, 1945 and our last discussion in connection with new cabs.

We are attaching herewith list showing total number of licenses, months and years in which new cabs were received and also showing the models. You will note this list covers all of the model Checker cabs acquired since May, 1929.

There is also enclosed herewith list showing the number of licenses for the years of 1929 to 1941, inclusive.

YELLOW CAB COMPANY — CHICAGO

Year	Month	Total Number of Licenses	New Cabs
1929	May	2350	230 K6
	June	2350	470 K6
	July	2350	300 K6
	August	2350	
	September	2350	
	October	2350	
1929	November	2350	
	December	2350	35 K6
	TOTAL	2350	1035 K6
1930	January	2350	
	February	2350	100 K7
	March	2350	100 K7
	April	2350	250 K7
	May	2350	150 K7
	June	2350	122 K7
	July	2350	23 K7
	August	2350	65 K7
	September	2350	190 K7
	October	2350	160 K7
	November	2350	5 K7
	December	2350	
	TOTAL	2350	1165 K7
1931	January	2350	
	February	2350	
	March	2350	
	April	2350	
	May	2350	
	June	2350	
	July	2350	
	August	2350	
	September	2350	
	October	2350	
	November	2350	425 M6
	December	2350	575 M6
1932	January	2350	1 M6
	TOTAL	2350	1001 M6

Year	Month	Total Number of Licenses	New Cabs
1935	January	2166	
	February	2166	
	March	2166	
	April	2166	
	May	2166	
	June	2166	
	July	2166	
	August	2166	125 Y1
	September	2166	390 Y1
	October	2166	364 Y1
	November	2166	121 Y1
	December	2166	
	TOTAL	2166	1000 Y1
1936	January	2166	
	February	2166	
	March	2166	
	April	2166	
	May	2166	50 Y2
	June	2166	175 Y2
	July	2166	225 Y2
	August	2166	50 Y2
	September	2166	
	October	2166	35 Y2
	November	2166	85 Y2
	December	2166	
1937	January	2166	
	February	2166	15 Y2
	March	2166	15 Y2
	TOTAL	2166	650 Y2
1940	January	1595	
	February	1595	
	March	1595	
	April	1595	
	May	1595	50 A
	June	1595	60 A
	July	1595	0 A
	August	1595	60 A
	September	1595	110 A
	October	1595	130 A
	November	1595	175 A
	December	1595	112 A
1941	January	1595	75 A
	February	1595	100 A
	March	1595	75 A
	April	1595	75 A
	May	1595	81 A
	June	1595	7 A
	July	1595	
	August	1595	
	September	1595	81 A
	October	1595	19 A
	November	1595	
	December	1595	150 A*
	TOTAL	1595	1450 A

* Includes 75 Rebuilt Model A Cabs.

2262 YELLOW CAB COMPANY — CHICAGO

Date	Number of Licenses
1929, January to December, inclusive	2350
1930, " " " "	2350
1931, " " " "	2350
1932, " " " "	2350
1933, " " " "	2350
1934, " " " "	2166
1935, " " " "	2166
1936, " " " "	2166
1937, " " " "	2166
1938, " " " "	1655
1939, " " " "	1655
1940, " " " "	1595
1941, " " " "	1595

2263 *Gov. Ex. 398. (Index to Volume of Records on Cab Sales, Etc., with certain attached records and tables—)*

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CABS IN OPERATION

• • •

The following table shows the average number of cabs operated by Cab Sales and Parts Corporation and Checker Taxi Company by months. . . .

TABLE NO. A

CABS IN OPERATION

The following figures are from the records of the Cab Sales and Parts Corporation and the Checker Taxi Company.

NUMBER OF CABS IN OPERATION

Month	Cab Sales & Parts	Checker	Total
1936			
January	500	954	1,454
February	500	937	1,437
March	500	948	1,448
April	500	948	1,448
May	500	961	1,461
June	500	969	1,469
July	500	985	1,485
August	500	998	1,498

2264	Month	Cab Sales & Parts	Checker	Total
	1936			
	September	500	997	1,497
	October	500	1,000	1,500
	November	500	997	1,497
	December	500	1,000	1,500
	1937			
	January	500	1,000	1,500
	February	500	1,000	1,500
	March	500	1,000	1,500
	April	500	1,000	1,500
	May	500	962	1,462
	June	500	911	1,411
	July	500	838	1,338
	August	500	820	1,320
	September	500	799	1,299
	October	500	794	1,294
	November	500	789	1,289
	December	500	783	1,283
	1938			
	January	500	664	1,164
	February	500	620	1,120
	March	500	585	1,085
	April	500	495	995
	May	500	477	977
	June	500	432	932
	July	508	415	923
	August	529	400	929
	September	546	393	939
	October	550	388	938
	November	550	383	933
	December	550	381	931
	1939			
	January	554	373	927
	February	590	268	858
	March	619	271	890
	April	640	242	882
	May	650	201	851
	June	650	198	848
	July	650	194	844
	August	650	190	840
	September	651	181	832
	October	663	179	842
	November	666	177	843
	December	666	175	841
2265				
	1940			
	January	684	172	856
	February	753	154	907
	March	763	150	913
	April	763	144	907
	May	764	143	907
	June	764	141	905
	July	765	141	906
	August	765	137	902
	September	765	136	901
	October	770	133	903
	November	771	132	903
	December	789	131	920

Month	Cab Sales & Parts	Checker	Total
1941			
January	802	126	928
February	828	90	918
March	830	64	894
April	795	58	853
May	794	50	844
June	800	39	839
July	800	—	800
August	800	—	800
September	826	—	826
October	893	—	893
November	900	—	900
December	901	—	901
1942			
January	942	—	942
February	951	—	951
March	998	—	998
April	1,000	—	1,000
May	1,000	—	1,000
June	1,000	—	1,000
July	1,000	—	1,000
August	1,000	—	1,000
September	1,000	—	1,000
October	1,000	—	1,000
November	1,000	—	1,000
December	1,000	—	1,000
1943			
January	1,000	—	1,000
February	1,000	—	1,000
March	1,000	—	1,000
April	1,000	—	1,000
May	1,000	—	1,000

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1943			
June	1,000	—	1,000
July	1,000	—	1,000
August	1,000	—	1,000
September	1,000	—	1,000
October	1,000	—	1,000
November	1,000	—	1,000
December	1,000	—	1,000

Gov. Ex. 398(a)—(Index to Volume of Records on Yellow, etc. with certain attached records and tables—)

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CABS IN OPERATION

The following table shows the average number of cabs operated by the Yellow Cab Company by months.

The chart immediately following the table indicates graphically the figures shown in the table.

TABLE NO. A

Cabs in Operation

Month	*Number of Cabs in Operation*
1936	
January	1,719
February	1,668
March	1,598
April	1,519
May	1,412
June	1,325
July	1,464
August	1,484
September	1,505
October	1,535
November	1,620
December	1,620
1937	
January	1,620
February	1,635
March	1,650
April	1,650
May	1,650

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1937	
June	1,650
July	1,650
August	1,647
September	1,590
October	1,542
November	1,506
December	1,501
1938	
January	1,495
February	1,482
March	1,480
April	1,480
May	1,470
June	1,436
July	1,397
August	1,370
September	1,361
October	1,361
November	1,361
December	1,361
1939	
January	1,351
February	1,312
March	1,294
April	1,282
May	1,260
June	1,249
July	1,238
August	1,223
September	1,217
October	1,205
November	1,204
December	1,204

Month	Number of Cabs in Operation
1940	
January	1,173
February	1,106
March	1,101
April	1,101
May	1,112
June	1,122
July	1,112
August	1,102
September	1,101
October	1,122
1940	
November	1,120
December	1,156
1941	
January	1,152
February	1,137
March	1,116
April	1,107
May	1,154
June	1,200
July	1,200
August	1,200
September	1,204
October	1,294
November	1,300
December	1,338
1942	
January	1,375
February	1,390
March	1,426
April	1,450
May	1,450
June	1,450
July	1,450
August	1,450
September	1,450
October	1,450
November	1,450
December	1,450
1943	
January	1,450
February	1,450
March	1,450
April	1,450
May	1,450
June	1,450
July	1,450
August	1,450
September	1,450
October	1,450
November	1,450
December	1,450

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B.

2269 *Gov. Ex. 398(b). (Index to Volume of Records on Yellow and Chicago Cab Operating Companies with certain attached records and tables—)*

Section 1

Statistics of Yellow Cab Company

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Table No. 7

Average Daily Commission Earned by Drivers

The following figures are based on operating statistics of the Yellow Cab Company and represent the probable average daily commission earned by drivers for cabs operating in the City of Chicago. The figures are average daily by months.

By Months

Month		Average Daily Commission Earned by Drivers
1935	July	2.12
	October	2.41
1936	January	3.16
	April	2.47
	July	2.78
	October	2.76
1937	January	3.41
	April	2.79
	July	2.71
	October	2.80
1938	January	3.53
	April	2.78
	July	2.75
	October	2.87
1939	January	3.72
	April	2.94
	July	2.66
	October	3.09
1940	January	4.38
	April	3.01
	July	3.17
	October	3.24
1941	January	4.13
	April	3.38
	July	3.79
	October	4.12
1942	January	4.85
	April	4.24
	July	4.97
	October	5.82
1943	January	6.95
	April	6.63
	July	6.95
	October	7.20

2270

Gov. Ex. 399. (November 1, 1944. Letter from Laird of Parmelee Motor Fuel Co. to Markin—)

At our last Directors Meeting of the Chicago Yellow Cab Company, it was brought up by Mr. Biezie of the Chicago Yellow Cab that he could not understand why the Checker Cab had 600 cars that were available for the road and Yellow Cab Company had only approximately 578 that they could put on the road, I told Mr. Biezie that I would investigate. I have finally solved the mystery.

It was a little hard to figure out why, if both Cab Company's cars are repaired on a 60-40 basis, why the number of cars available for the road should not remain on that basis, instead of practically a 50-50 basis.

Gov. Ex. 400. (February 15, 1946. Letter from Edward J. Gorman, Commissioner, City of Chicago, Public Vehicle License Commission to Leonard Bessman, Antitrust Division, with attachment consisting of listing of the number of taxicabs licensed in the City of Chicago from 1929 to 1945, inclusive.—)

Confirming telephone conversation of today, attached hereto is a list of taxicab licenses in the City of Chicago from 1929 to 1945 inclusive.

[Attachments copied on following page]

2271

NUMBER OF TAXICABS LICENSED IN THE CITY OF CHICAGO

	Yellow Cab Company	Checker Taxi Company	Independents	Total
1929	2350	1750	1189	5289
1930	2350	1999	950	5299
1931	2350	1500	681	4531
1932	2350	1500	642	4492
1933	2350	1500	258	4108
1934	2166	1500	442	4108
1935	2166	1500	441	4107
1936	2166	1500	414	4080
1937	2166	1500	405	4071
1938	1595	1000	405	3000
1939	1595	1000	405	3000
1940	1595	1000	405	3000
1941	1595	1000	405	3000
1942	1595	1000	405	3000
1943	1595	1000	405	3000
1944	1595	1000	405	3000
1945	1595	1000	405	3000

2272 *Gov. Ex. 401. (February 4, 1943. Letter from Bieze of Yellow to Wyatt of Parmelee—)*

You will recall that we are operating 1450 Model A cabs and have an additional 145 Model Y cabs in storage at a warehouse in order to be in a position at all times to show that we have 1595 pieces of equipment to cover the 1595 licenses that are issued to our company under the terms of the Chicago Ordinance and Franchise. While it is true we have 1595 licensed taxicabs, at no time have we attempted to actually operate more than 1450 cabs. None of the 145 Model Y cabs have been operated since the last of Model A cabs were purchased in 1941.

Gov. Ex. 402. (February 24, 1943. Letter from Bieze to Rank, with attachment—)

In accordance with my telephone conversation with you of this date, we have in storage 145 taxicabs. We are holding Illinois license plates for the year 1943 covering all of said taxicabs and none of these plates are attached to the cabs. All of these plates are held in our vaults at 57 East 21st Street.

We wish to assure you that none of these 145 taxicabs will be placed in operation at any time during the year 1943, unless we give you reasonable notice in advance in writing. Our present impression, however, is that none of these cabs will at any time be operated during this present year.

YELLOW CAB COMPANY—CHICAGO
1943 ILLINOIS STATE LICENSE PLATES
HELD IN VAULTS AT 57 EAST 21ST STREET

Gov. Ex. 403. (February 1, 1944. Letter from McMath of TMC to Bieze of Yellow—)

With reference to the cabs which we have in storage and those which will be put in storage in the future, we wish to advise you that we have not taken out any fire and theft insurance, inasmuch as this equipment belongs to your company.

We know that you have your regular insurance on these cabs, however, your policy may specify all locations other than those in which we have the cabs stored at the present moment.

This letter will serve to advise you of this condition so that the proper advice may be given to your insurance companies.

2273 *Gov. Ex. 404. (October 17, 1944. Letter from "Danny" to "Rudolph"—)*

New York

Dear Rudolph—

"M.M." recently asked me to send you a list of serial numbers, etc. on 175 vehicles that are presently warehoused by us. Such a list is enclosed and it totals 175 cabs.

Is this action sufficient for your needs? Regards

October 17, '44

Gov. Ex. 405. (November 1, 1944. Letter from Bieze to Markin—)

In accordance with your instructions, Danny sent to me a list of serial numbers, etc., on 175-vehicles that are presently warehoused.

Is it agreeable to you that I send to Mr. Dannemann the enclosed (copy) letter. * * * 11-3-44 Mr. R. H. Bieze: I see no reason why you shouldn't send the attached letter to Mr. Dannemann.

M. MARKIN

Gov. Ex. 406. (November 1, 1944. Letter from Bieze to Dannemann—)

I have your letter of October 17, 1944, together with serial numbers, etc., on 175 vehicles.

In order for us to make application for the State licenses, it is absolutely necessary that we receive from you the State Title for 149 Model A cabs.

Would you be good enough to forward these to us at your earliest convenience.

Gov. Ex. 407. (May 25, 1945. Letter from Vice President of Yellow to James R. Quinn—)

In accord with a request made at the recent meeting of the Committee on Local Transportation, we submit for your consideration the following statement of facts:

Prior to our entry into World War II, the City of Chicago always enjoyed the finest taxicab service in the country. In a large measure this was due to this company's time-honored consistent policy of providing the finest taxicabs available, meticulous maintenance, a most capable driver personnel, and early and frequent taxicab replacement.

2274 The war, with its attendant necessary restrictions and regulations, made impossible a continua-

tion of this policy. Nevertheless, and notwithstanding, the City of Chicago continues to have the best taxicab service in the country.

With the imminent and certain lifting of war-time restrictions, this company is now fully prepared with complete and comprehensive plans providing the best taxicabs obtainable, together with necessary parts, machinery, additional new garages and relocation of existing garages, making possible the extension of our service over a larger area including the outlying sections of the city in contemplation of post war changed conditions. All this will involve an expenditure of several million dollars, which are immediately available.

For thirty years this company has ably demonstrated its ability to give the people of Chicago the finest taxicab service. Backed by complete, sound financial responsibility, a capable and loyal Union driver and operating personnel working harmoniously with efficient management, and an enviable long record of honorable dealings and cooperation with the people of the City of Chicago, this company now seeks the privilege of the continuation of its service.

The present contract ordinance between the City of Chicago and all Chicago taxicab operators expires December 31, 1945. In view of our large present investment, the necessary immediate additional investment of many million dollars, and the need for the opportunity to increase our scope and ability to better serve the people and City of Chicago, this company joins with all Chicago taxicab operators in petitioning your honorable body to grant to the holders of all present taxicab licenses an extension of the existing contract for a period of ten years beginning January 1, 1946.

Gov. Ex. 408. (May 29, 1945. Letter from Bieze to Markin—)

There is enclosed herewith Transcript of "Proceedings Of The Committee On Local Transportation Of The City Council Of Chicago" held on Wednesday, May 23, 1945. I was able to borrow this copy with the understanding that I would see to it that same would be returned.

I thought you might particularly be interested in reading Bowler's statement running from Page 75 to 76.

Would you be good enough to see to it that this Transcript is returned to me.

Gov. Ex. 409. (May 31, 1945. Letter from Markin to Bieze—)

We are returning to you herewith Transcript of "Proceedings Of The Committee On Local Transportation
2275 Of The City Of Chicago" (held on Wednesday, May 23, 1945), which you sent to me with your letter of May 29th.

Gov. Ex. 410. (June 12, 1945. Letter from Samuels to James R. Quinn—)

As a result of the action on June 11th of the Committee on Local Transportation of the City Council, in recommending to the full City Council that the present contract taxicab ordinance be extended for a period of five (5) years, from January 1, 1946, instead of the ten (10) year period which was respectfully sought, according to our letter of June 7, 1945, we wish to advise you that the passage of an ordinance extending the present contract ordinance for a period of five (5) years will be acceptable to this Company, and we do hereby pledge to carry out all of the obligations as set forth in our letter to you, dated June 7, 1945, particularly with reference to the matter of supplying an entire new fleet of taxicabs at the earliest possible time.

Gov. Ex. 411. (Journal of the Proceedings of the City Council of the City of Chicago, Illinois, Regular Meeting, Tuesday, June 26, 1945, at 10:30 o'clock A.-M. (Council Chamber, City Hall, Chicago, Illinois), Official Record—)

[3744]

The following is said ordinance as passed:

Be it Ordained by the City Council of the City of Chicago:

Section 1. Section 4 of the ordinance relating to taxicab licenses passed December 22, 1937, appearing on page 5027 of the Journal of Proceedings of the City Council of that date is hereby amended by striking out the year "1945" in line twelve and inserting in lieu thereof the year "1950."

Section 2. This ordinance shall be in full force and effect from and after its passage provided one or more licensees under the ordinance passed May 18, 1934, and appearing in the Journal of Proceedings of the City Council of that date on pages 2271 to 2273, inclusive, granting permission and authority for the operation of taxicabs within the city and for the appointment of a public vehicle commissioner, as amended, shall within

thirty (30) days after the passage of this ordinance file with the City Clerk formal written acceptance of this ordinance.

Gov. Ex. 412. (July 17, 1945. Notice from Yellow to Bieze—)

WHEREAS, under the terms and provisions of a certain ordinance passed by the City Council of the City of Chicago on the 26th day of June, A. D. 1945, and published on
2276 page 3744 of the Journal of the Proceedings of the City Council of the City of Chicago, of that date, and which said ordinance purports to amend a certain other ordinance passed on the 22nd day of December, A. D. 1937, and which appears in the Journal of the Proceedings of the City Council of that date on page 5027; and

WHEREAS, by the terms of said ordinance of the 26th day of June, A. D. 1945, licensees are required to file a written acceptance of said ordinance; and

WHEREAS, the undersigned, YELLOW CAB COMPANY, a Corporation, was one of the licensees under the original ordinance passed May 18, 1934, and which said ordinance appears in the Journal of the Proceedings of the City Council of that date on pages 2271 to 2273, inclusive;

THEREFORE, YELLOW CAB COMPANY, a Corporation, owning 1595 taxicab licenses under the provisions of said last mentioned ordinance, does hereby notify the City Clerk of the City of Chicago of its acceptance of the said ordinance passed on the 26th day of June, A. D. 1945.

We further serve notice upon the City of Chicago that we are filing a copy of this acceptance not only with the City Clerk of the City of Chicago but with the Public Vehicle License Commissioner, created by the ordinances of the City of Chicago, and also upon the Corporation counsel of the City of Chicago.

Dated this 17th day of July, A. D. 1945, at Chicago, Illinois.

YELLOW CAB COMPANY
By s/ R. H. BIEZE
Vice-President.

Gov. Ex. 413. (July 26, 1945. Letter from Samuels to Markin, with attachment—)

In view of the agitation recently seen in the newspapers about taxicab licenses for veterans, and the suggestion which had previously been made by one of the aldermen, I thought that you would be interested in certain observations in connection with the ordinances as they now stand.

After reading these ordinances, you will note how important it was to have our acceptance indicate that our contract is based upon the original 1934 ordinance passed in May of that year.

Under the 1934 ordinance Section 6 of which I enclose in full, you will note how express the language is, with reference to the matter of issuing additional licenses, and the ordinance is very explicit that it can only be done if—"the Commission, after a hearing, shall declare that public convenience and necessity requires additional taxicab service."

2277 The section further is very explicit that in order to determine public convenience and necessity, 7 different factors must be considered, and these are all set out. This is the basic ordinance which was the contract as originally made.

I now call your attention to the specific provisions found in the ordinance passed December 22, 1937, and I have quoted liberally from that ordinance so that you may get the whole picture.

Note, that this is the ordinance which reduced taxicabs to 3000, based upon the surrender of a sufficient number of licenses, so as to bring the net result down to 3000.

Then Section 1 goes on and uses some very express language stating—"No taxicabs license shall thereafter, (March 31 ,1938), be issued," except upon certain conditions. Then follows Section 2, which is the most important section and grants us specific rights, which I think cannot be violated, because we have a definite contract with the city.

Please note that in the first 4 lines, the city ordinance distinctly refers back to the licensees "under the ordinance of May 18, 1934", which, of course, refers to us, and then the section goes on to say—"Provided that such licensees who shall have voluntarily surrendered any taxicab licenses or their right to renewal of any taxicab licenses on or before March 31, 1938, SHALL HAVE THE RIGHT TO SUCH NUMBER OF TAXICAB LICENSES AS WERE SO SURRENDERED, AND SUCH RIGHT SHALL BE PRIOR TO THE RIGHT OF ANY PERSON, etc."

It is perfectly clear to me, therefore, that any ordinance, if passed, which attempts to increase the number of licenses over and beyond 3000, would be a violation of our contract with the city and if, after a public hearing, the Public Vehicle License Commissioner should determine that public convenience and necessity requires more cabs and

is ready to grant more licenses, Yellow and Checker would have a right under this specific provision to obtain those licenses before any license can be granted to any other person or firm.

I thought you would be interested in this analysis, in view of the present agitation.

Gov. Ex. 414 (July 27, 1945. Letter from Markin to Samuels of Yellow—)

Thank you for your communication of July 26th with the attached ordinance.

In discussing the matter with the proper authorities in Chicago they have agreed that you were justified in drawing up the document as you did. Thank you very much.

2278 *Gov. Ex. 415 (June 28, 1945. Letter from Oakland of CCM to Bieze of Yellow—)*

I recently told you that I had compromised the claim under Section 722 for Cab Sales and Parts Corporation by withdrawing the claim and settling in compromise on some other taxes. This settlement was made with a conferee in Chicago and must go to Washington for approval. There is a question in my mind whether or not this compromise settlement will be approved in Washington, and if not I wish to be in a position to immediately reinstate this claim under Section 722.

One of the items in our claim is the right to reconstruct our income based on the operation of 1,000 taxicabs. The Revenue Agent who examined this Return is agreeable to reconstructing the income based on 800 taxicabs because of the order which Cab Sales placed with Checker Cab Manufacturing Corporation for 800 cabs prior to January 1, 1940. I explained to him that it was contemplated by Cab Sales that they would operate 800 Model A cabs and 200 Model Y cabs, but that due to the superiority of the Model A over the Model Y that it was impossible to get drivers to operate the Model Y cabs. The Revenue Agent referred to the agreement between Yellow and Checker and Cab Sales, wherein if the licenses were increased beyond 3,000 that Checker and Yellow would obtain these licenses and operate them on a basis of 60/40. It is the Revenue Agent's contention that inasmuch as Yellow only ordered 1,200 cabs and Cab Sales ordered 800 cabs that that was all of the cabs these companies contemplated using. I advised him that

Yellow contemplated operating 395 Model Y cabs, and did in fact operate some Model Y cabs, after the 1,200 cabs were received. I also told him that it was the policy of large fleet operators to only replace a portion of their fleet when ordering new cabs, and that I was sure that the records of Yellow Cab Company in Chicago would sustain this contention.

Gov. Ex. 416 (October 26, 1945. Letter from William W. Cloud to Samuels of Yellow—)

It was indeed a real pleasure to greet you again at the recent Cleveland Meeting . . .

• • •

One thing we are very much interested in as are many other operators is the subject of returning war veterans and various proposed G. I. Car Companies or veteran individual operators. So far a few of our furloughed employees and all who went into the several armed services were furloughed, are back on the job but others desire to try something else. What are you doing on this sub-
2279 ject and how are cab operating certificates issued in Chicago? A recent hearing on the application for 25 permits filed by the De Luxe Cab Co. Inc., a negro outfit brought out the race question prominently. We had to initiate the opposition, got competitors to join and had one of those prolonged hearings with which you have had same past experience. In due course the Commission refused the permits as they have been doing all individual applications since the 1,000 maximum number was established. I feel the pressure however, will come later as veterans return in greater volume. We will employ all we can who are eligible, if and when new cabs are available and employee maximum requirements permit.

Gov. Ex. 417 (October 29, 1945. Letter from Samuels of Yellow to William W. Cloud—)

It was a real pleasure to hear from you again and, as you intimate, these meetings are altogether too infrequent, but that is the way when you get as old as we are.

Answering your conclusion in regard to veterans, our problem thus far has been working out fairly well due to very favorable situations. First, an ordinance limiting the number of cabs and no chance for an increase without a hearing as to public convenience and necessity and second, the fact that our Company and the Checker Co. are operat-

ing under a closed shop contract with the American Federation of Labor.

In view of this situation, we convinced the Union leaders that it was their job to protect every veteran cab driver who had been in the employ of these two companies and who were still in service so that when they returned their jobs would be assured, and at the time the agitation started here there were some 1100 men in that position. Consequently, when the agitators sought help from the City Council, they, (the agitators) were up against three hurdles; first, the limitation ordinance; second, the fact that many veterans were still fighting and, under the law, were entitled to get their jobs and, in addition thereto, they had to fight Union labor. Thereupon, the Union officials took up the war and made quite an effective argument, that there was no reason why more cab drivers should be put upon the streets of Chicago while other cab drivers were still in the armed forces and who had a right to expect that their jobs were secure. This relieved our aldermen of any particular embarrassment.

It was also fortunate that the leaders of the so-called veterans group turned out to be men who had been discharged for one reason or another by the organized companies and were not in any way the type of men who should have taken up this fight.

2280 Another thing which bothered them was the fact that four-fifths of all of the so-called veterans group were colored and this proved a very embarrassing situation because the veterans group were unable to answer many of the questions which the colored men were asking, such as—will we operate out of one garage; what will happen if a telephone order comes in from a white patron who expects a white cab driver and finds that you have sent a colored man? Also, how many licenses of the number which you receive will be turned over to colored operators? Another embarrassment which appeared was the inability to raise enough money.

Another feature which added to the embarrassment of the organization was that they, in their determination, began to operate so-called livery cars in violation of the law, which resulted in numerous arrests which, of course, means employment of lawyers and will, undoubtedly, result in numerous fines. It is a serious situation, however, because neither Yellow nor Checker in Chicago have sufficient equipment to meet the demands of the traveling public and will not be able to meet those demands until new fleets are

obtainable. Consequently, we are not in a very good position to insist too strongly on the limitation of these illegal operations in order to avoid unnecessary complaints from people who need cab service.

In conclusion, I merely wish to emphasize that the most important factor in our present situation has been the insistence and attitude of the Union in its determination to protect the rights of their own veterans still to return. We ran quite an extensive advertisement setting out our point of view and I take pleasure in enclosing copy of same because we believe it was very effective in supporting our City Council aldermen in taking a stand that until a survey could indicate that when normal conditions are reestablished in Chicago, more cabs will be needed than the 3000 covered by our limitation ordinance. With that in mind, the city traffic engineer is making a survey now as to conditions so that, in three or four months, he will be in position to indicate whether there is a greater or lesser demand for cab service and thus have a basis for comparison. Already the city traffic engineer has rendered a preliminary report which indicates that whereas prior to V-J Day it was impossible to see or hire a cab on any cab stand in Chicago, since that time there is considerable evidence of cabs standing on the various cab stands during certain portions of the day.

In addition thereto, we submitted evidence to indicate that whereas it was practically impossible before V-J Day to fill telephone orders in the outlying sections of Chicago, since that time we are definitely filling many more telephone calls, thus indicating that our so-called Loop railroad and hotel business must necessarily be less, which results in freeing cabs for service in outlying sections.

2281 I hope this gives you a fairly comprehensive answer to your questions but if there is anything additional that you require, please contact me.

I am sending you this letter in duplicate so that if you should care to send one to your competitor, in order to solicit his active cooperation, you may do so without additional trouble.

Gov. Ex. 418 (December 10, 1942. Letter from Dudley, Duvall & Dudley to Yellow—)

The Yellow Cab Transit Company is an Oklahoma corporation, engaged in the motor freight transportation business as a common carrier under the authority of the Interstate Commerce Commission.

It operates in Illinois, and through and out of Chicago, and it has a terminal in Chicago. It operates in Oklahoma, Texas, Kansas, Missouri, Kentucky, Indiana and Illinois, and is authorized to do business as a foreign corporation in all of these States except Illinois, and, of course, its principal place of business is in Oklahoma City.

We recently had up with the Secretary of State of Illinois an application for permit to do business in Illinois as a foreign corporation. The Secretary takes the position that he can not issue a permit without a written consent from you, and has suggested that we take this matter up with you.

We are preparing an application to change the corporate name from Yellow Cab Transit Company to Yellow Transit Company, and we would be pleased to have you advise us your attitude with reference to the consent, assuming that the name is changed as above indicated. Stamped envelope is enclosed for reply.

Gov. Ex. 419 (December 14, 1942. Letter from Samuels of Yellow to Dudley—)

Your letter of December 10th, in reference to the matter of our consent for your corporation to be licensed in the State of Illinois, received.

In answer thereto, if you will draw a special agreement that Yellow Transit Company, which is to be the name of your company, is engaged only in the matter of transporting motor freight incidental to its business transacted in the other states mentioned in your letter and has never been engaged in the taxicab business or in the parcel delivery business in the State of Illinois and does not intend to engage in any such business in the State of Illinois and
2282 particularly will not, under any circumstances, engage in the taxicab business or the parcel delivery business within the entire County of Cook and State of Illinois at any time so that this company may be properly protected, and if you will expressly recite in the document the type of vehicle which you are using so that we may be assured that the vehicle under no circumstances might be converted into a vehicle for the transportation of passengers for hire or for parcel delivery, then I am inclined to advise our people to execute a contract whereby we do assent to your licensing in the State of Illinois.

We wish, of course, to be absolutely sure and certain that you do not enter a competitive field and, furthermore,

we would like for our files a picture showing the color scheme of the vehicles which you are using for standard equipment so that we may know that there is absolutely no attempt at duplicating the type of equipment which we have been using for many years.

Gov. Ex. 420 (Journal of the Proceedings of the City Council of the City of Chicago, Illinois, Regular Meeting, Friday, December 28, 1945 at 2:00 o'clock P. M.—)

[4682]

Direction for Action Looking to Operation of Total of 3,000 Taxicabs.

Alderman Young presented the following proposed resolution:

WHEREAS, The people of the city of Chicago are entitled to the very best possible transportation facilities from all persons and corporations authorized to furnish transportation of passengers for hire on the streets of the city; and

WHEREAS, The supply of private transportation facilities has diminished and the demand for all forms of local transportation facilities has increased on account of the war and reconversion from wartime to peacetime economy, and all public service facilities devoted to the transportation of passengers in the city of Chicago should be furnished to the utmost capacity; therefore,

BE IT RESOLVED, That all of the taxicab licensees be required to put into service at once all taxicabs licensed pursuant to ordinance, and the Public Vehicle License Commissioner hereby is authorized and directed to enforce the provisions of the taxicab ordinance to compel full operation of 3,000 taxicabs in the city of Chicago, and unless the licensees provide said 3,000 taxicabs on or before January 15, 1946 the Public Vehicle License
2283 Commissioner is authorized and directed to take all steps that are necessary for the licensing of additional taxicabs in the city of Chicago.

By unanimous consent committee consideration was dispensed with.

Alderman Young moved to adopt the proposed resolution.

The motion prevailed.

Gov. Ex. 421 (Journal of the Proceedings of the City Council of the City of Chicago, Illinois, Regular Meeting, Wednesday, January 16, 1946 at 10:30 o'clock A. M.)

[4954]

Authorization and Direction for Issuance of 250 Permits for Operation of Taxicabs.

* * *

The following is said order as passed:

Ordered, That the Public Vehicle License Commissioner be and he is hereby authorized and directed to issue 250 permits for the operation of taxicabs, and that ex-servicemen be given preference in the issuance of such permits; such permits to be issued only to individuals, and to be distributed generally, throughout the city.

Gov. Ex. 422 (Opinion by Judge Michael Feinberg entered in Circuit Court of Cook County in Yellow Cab Company v. City of Chicago, et al.—)

STATE OF ILLINOIS } ss.
COUNTY OF COOK }

In the Circuit Court of Cook County

YELLOW CAB COMPANY, a Corporation, *Plaintiff*,
vs.
CITY OF CHICAGO, a Municipal Corporation, *et al.*, *Defendants.*
No. 46 C 943

OPINION BY JUDGE MICHAEL FEINBERG

Complainants, Yellow Cab Company and Checker Taxi Company seek in this representative action on behalf of themselves and others similarly situated an injunction against the City of Chicago, its Mayor, Public Vehicle License Commissioner and City Clerk to restrain them from issuing or causing to be issued any permits or licenses for operation of taxi cabs in Chicago under an order or resolution passed by the City Council, January 16,
2284 1946 and from cancelling two hundred thirty-four (234) taxi cab licenses previously issued to complainant, Yellow Cab Company and eighty-seven (87) issued to the Checker Company as threatened in a notice to them, sent by the said license commissioner on January 22, 1946.

The hearing before this court is upon the motion of complainants for an injunction, pendente lite, based upon the sworn complaints, as amended, the answers of the defendants and the evidence heard on behalf of the respective parties.

• • •

On December 28, 1945 the Council passed a resolution reciting that the demand for all forms of local transportation facilities has increased on account of the war and the reconversion from war to peace time economy, and that all public service facilities devoted to the transportation of passengers in the City should be furnished to the utmost capacity, and directing the License Commissioner to enforce the provisions of the taxicab ordinance and to compel full operation of three thousand (3000) taxicabs in the City, and that unless the licensees provide said three thousand (3000) taxicabs by January 15, 1946, he is authorized to take all steps necessary for the licensing of additional taxicabs in the City.

On January 16, 1946, the Council passed the following:—

> "ORDERED, that the Public Vehicle License Commissioner be and he is hereby authorized and directed to issue two hundred fifty (250) permits for the operation of taxicabs and that exservicemen be given preference in the issuance of such permits; such permits to be issued only to individuals and to be distributed generally throughout the city."

On January 22, 1946 the Commissioner addressed a letter to each of the complainants advising them that his office had surveyed their records of taxicabs and operations and directed that as to the Yellow Cab Company two hundred thirty-four (234) taxicabs and as to the Checker Company eighty-seven (87) taxicabs listed in the letter, which had not been operated, be placed in operation within five (5) days from said date or the licenses for said cabs would be cancelled and issued to others as provided in the resolution of December 28, 1945.

The passage of the resolution of December 28, 1945, the letter of the commissioner of January 2, 1946, the resolution or order of the Council of January 16, 1946 and the letter of the Commissioner of January 22, 1946 led to the application for the injunction prayed for in the complaints herein.

• • •

It is argued by counsel for the defendants that since it appears from the evidence that the Yellow Cab Company has not operated two hundred thirty-four (234) of
2285 the cabs shown in the list submitted by the Commissioner in his letter of January 22, 1946, and the Checker Company has not operated eighty-seven (87) of its cabs, therefore it lies in the power of the Commissioner under the resolution of the Council, December 28, 1945, to revoke the licenses as to such taxicabs and issue permits as provided in the order of the City Council dated January 16, 1946.

It appears clearly from the sworn allegations of the complaints and evidence heard, that war time conditions followed by the reconversion period from war to peace time economy has made it impossible for the complainants to procure new taxicabs in place of the number shown to be inoperable, nor to procure enough new parts for replacement in most of said taxicabs. Not only is such fact alleged in the sworn complaints and proven by the evidence, but the City Council itself sent on record in its resolution adopted May 24, 1945 that it knew that the life expectancy of licensed taxicabs was three years, and that many of said taxicabs had been in operation at least a year and a half more than its life expectancy, and that due to the lack of authority from the War Production Board and Office of Defense Transportation it had been impossible for the licensees of taxicabs to replace inoperable taxicabs.

• • •

The 1934 ordinance, when accepted by the complainants and the other licensees, became a contract between the City and the licensees.

• • •

If the ordinance of 1934 be considered a contract between the City and the licensees, then such a contract may not be terminated, except in the manner prescribed by the ordinance as already indicated. Hence the passage of the order or resolution adopted by the Council January 16, 1946 likewise is an unauthorized and illegal interference with the contract rights of the parties prescribed by the 1934 ordinance.

• • •

It follows from what has been said that the complainants are entitled to an injunction, pendente lite, as prayed for in the complaints, and accordingly it is so ORDERED.

2286 *Gov. Ex. 423 (January 1, 1934, Agreement between The Parmelee Company and TMC)*

The Management Corporation is engaged in the business of assisting in the management and supervising the operations of motor transportation companies, and receives compensation from companies to which it renders such assistance. The Corporation is engaged in conducting a transportation business in the City of Chicago, Illinois, and desires to continue to avail itself of the management and supervisory services of the Management Corporation and/or of its executives for the term of this Agreement as hereinafter set forth.

Now, Therefore, in consideration of the premises and of the mutual covenants hereinafter contained the parties hereto agree as follows:

1. The Management Corporation agrees to furnish its services, for a period of three years, beginning on January 1, 1934 and ending at 11:59 P. M. on December 31, 1936, to the Corporation and to each of the Companies, from time to time, in connection with the management, operation and development of the Corporation and each of the Companies and their respective properties as follows:

* * *

The Parmelee Company
By s/ Charles J. Condon
President
(Corporate Seal)

ATTEST:
.....
Secretary

The Transportation Management Corporation
By /s E. S. Higgins
Vice-President
(Corporate Seal)

ATTEST:
/s/ Levin Rank
Secretary

Gov. Ex. 424 (May 12, 1937, Letter from C. J. Condon to Oakland of CCM)

Pursuant to our telephone conversation, we enclose our order #3022 for 43 coaches of the nine-passenger model "Y" type.

It is of the greatest importance that this equipment be delivered to us at the earliest possible moment.
2287 In the first place, in order that we may be able to reap full benefit in connection with the heavy summer travel and secondly, we are being pounded constantly

by the highest Passenger officials of nearly all of the railroads, as well as Vice Presidents of the Operating Departments. Incidentally, Mr. Williamson, President of the New York Central System is keeping an eagle eye on our operations and dislikes for us to use our older type of equipment any longer, all of which, I am sure, you will appreciate is causing us considerable anxiety and in fact, we have told many of the Passenger officials that our fleet of equipment would be augmented with new cars to a great extent during the summer.

As we also are aware that you probably will be confronted with obstacles which will have a tendency to slow up building in many instances, nevertheless, I trust that you will bring all possible pressure to bear, that the equipment will be completed and delivered to us within the very near future and with kindest regards, remain

43 coaches, model "Y" 9 passengers capacity
142-½ inch wheel base

and charge to our account.

Govs Ex. 425 (March 29, 1940, Letter from Rank of Parmelee to Bieze of Yellow)

On those occasions where Parmelee uses taxicabs for the transportation of its transfer passengers it should be billed at the meter rate for such services. It seems there has been some slight misunderstanding about this in your office and I would thank you to issue the necessary instructions promptly on your return.

Gov. Ex. 426 (Plaintiff's interrogatory No. 3)

To Parmelee. With respect to paragraph 4 of your answer, which states that some railroad passengers traveling through Chicago use limousine coaches and trucks operated by Parmelee in transporting themselves and their luggage from one railroad station to another, state:

(a) The number of such passengers that were
2288 transported by you between railroad stations in Chicago during each calendar year 1940 to 1946, inclusive.

(b) The quantity of luggage that was transported by you between railroad stations in Chicago during each calendar year 1940 to 1946, inclusive.

(c) What records you have, if any:

(1) Showing the proportion of the total number of passengers transported by you between railroad stations in Chicago during one or more periods

of time since December 31, 1939, that were traveling from one State to another;

(2) From which said proportion can be calculated for one or more periods of time since December 31, 1939, specifying each such period of time.

Gov. Ex. 427 (Parmelee's answer to plaintiff's interrogatory No. 3)

(a) The number of railroad passengers transported between railroad stations in Chicago by Parmelee Transportation Company during each calendar year from 1940 to 1946, inclusive, was as follows:

1940	695,933*	1944	4,006,941
1941	1,061,375	1945	3,656,952
1942	2,023,122	1946	2,618,610
1943	3,607,698		

* Represents the total for the last ten months of 1940, as figures for January and February of 1940 are not available.

(b) The number of pieces of checked baggage transported by Parmelee Transportation Company between railroad stations in Chicago during each calendar year from 1940 to 1946, inclusive, was as follows:

1940	**	1944	3,028,310
1941	848,739	1945	2,840,037
1942	1,434,831	1946	1,605,564
1943	2,675,980		

** No record was kept prior to December, 1940.

The figures above represent checked baggage and do not include hand baggage of passengers transported with such passengers.

(c) Parmelee Transportation Company has no records showing the number of passengers who were traveling from one state to another.

Gov. Ex. 428 (Plaintiff's interrogatory No. 7)

2289 To Parmelee. With respect to your denial of the allegations of paragraph 14 of the amended complaint that you operate 85 non-licensed cabs in transferring passengers between railroad stations in Chicago, state:

(a) The number of motor vehicles used by you on or about August 29, 1947, respectively, in transferring passengers between railroad stations in Chicago;

(b) The number of such vehicles that were licensed as cabs by the City of Chicago.

Gov. Ex. 429 (Parmelee's answer to plaintiff's interrogatory No. 7)

(a) The number of motor vehicles used by Parmelee Transportation Company on or about August 29, 1947 in transferring passengers between railroad stations in Chicago was 85.

(b) None of such motor vehicles was licensed as a cab by the City of Chicago.

Gov. Ex. 430 (Oct. 16, 1939, Letter from W. A. Sheeder, General Traffic Manager of Parmelee, to C.P.G. Fuller)

Conformable to your letter October 14th, I am showing below a schedule of routes generally traveled by our coaches in transferring passengers between railroad stations.

Between Chicago & Northwestern Terminal and,

Chicago Union Station: South on Canal St. to Adams St., west to Clinton St., thence a sharp left turn into courtway at Adams and Clinton Sts.

Grand Central Station: South on Canal St. to Harrison St., thence east to station.

La Salle St. Station: South on Canal St. to Van Buren St., thence east to La Salle St., thence one-third of block south to station.

Dearborn Station: South on Canal to Harrison, east on Harrison to Dearborn, thence south one block to station.

Park Row Station: South on Canal St. to Roosevelt Rd., thence east to Michigan Avenue, thence north to 11th Place, thence one-half block east to station.

Between Chicago Union Station and, . . .

Gov. Ex. 431 (March 3, 1944, Letter from C. L. Passolt of Parmelee to Director of Selective Service)

We operate the only passenger and baggage transportation service between the various railroad stations in the City of Chicago as an interline carrier as defined in the Interstate Commerce Act. We are currently transferring 350,000 passengers and 275,000 pieces of baggage per month. Attention is called to the fact that approximately 80% of this business represents troop movements and other necessary military transportation.

2290

The Parmelee Transportation service was founded in 1853 for that purpose, and has been in continuous operation since that time, and is recognized by the railroads and general public as a necessary and important link in inter-railroad transportation in Chicago.

Our personnel, at the present time, is approximately the same as in 1941, whereas our business has increased approximately 400%. As you will note, the number of employees as shown on the schedule is 46 less than that shown on the schedule approved October 7, 1943, and we have 31 men shown on the list whose release time has passed or will have passed at the expiration of our present schedule, that is April 7, 1944. Most of these men will undoubtedly be inducted into service within the next few months, either as a result of our new replacement schedule or from the list of men above whose time has passed. Without allowing for rejections for physical reasons, we will lose sixty-nine (69) to the service in the next six months. We have tried, whenever possible, to replace men lost in the armed service with men over 38, but our experience has been that it is becoming constantly more difficult to replace men induced in the service. The total number of people employed by Parmelee Transportation Company is 290. Sixty nine (69) men is approximately 25% of our organization and if we lose that number of men it would very seriously impair our passenger service to the railroads, which as explained above is largely military.

Gov. Ex. 432 (Aug. 1, 1944, Letter from C. L. Passolt of Parmelee to War Manpower Commission)

We are enclosing herewith six (6) copies of "Designation of an Activity as "Locally Needed", and one (1) copy of "Report by Establishment Requesting Designation as Locally Needed".

To supplement the information given in these reports, we are outlining a brief description of the nature of our operation.

The primary business of the Parmelee Transportation Company is the transfer of passengers and baggage between railroad stations in Chicago, which we handle as interline carriers for the accounts of the railroads entering Chicago.

During the month of June 1944, which is a typical month, we handled approximately 375,000 passengers. Of that amount, all but approximately 5,000 were handled between railroad stations in Chicago.

During the same period, we handled approximately 335,000 pieces of baggage, which were checked baggage, and in addition to the hand baggage carried with passengers in the Parmelee vehicles. 311,000 pieces of baggage of that total of approximately 335,000 were handled from one railroad station in Chicago to another
2291 railroad station in Chicago as part of through transportation of passengers and baggage.

The transfer of passengers and baggage between railroad stations in Chicago represents 96% of our total business and attention is called to the fact, that approximately 80% of this represents troop movements or other necessary military transportation.

Parmelee Transportation service was founded in 1853 and it has been in continuous operation since that time, and is recognized by the railroads and the general public as a necessary link in inter-railroad station transportation in Chicago.

Because of the currently heavy passenger and baggage traffic on the railroads, a large majority which is essential to the war effort, we ask that the classification of "locally needed" be given to us at the earliest possible date.

Gov. Ex. 433 (Aug. 22, 1944, Letter from Passolt to Markin, with attachment consisting of draft of letter dated Aug. 23, 1944 from Passolt to Office of Defense Transportation)

As per your request, we are enclosing herewith draft of a letter and an attachment for your approval or revision before sending same to the ODT.

In response to your letter of August 3, 1944, we are giving you plans for our operation, based on mileage, as required on the letter to all Operators of Busses and Taxicabs dated January 31, 1943, and signed by Joseph B. Eastman.

We operate as a contract carrier, both passengers and baggage, for all railroads running to and from Chicago, and during the first 7 months of 1944 transported an average of approximately 350,000 passengers per month between railroad stations in the City of Chicago. The fare for these transfers is included by the railroad companies at the time the railroad tickets are sold to the passengers and, therefore, this transportation is guaranteed to the passengers. Attention is called to the fact that approximately 75% to 80% of the passengers are members of the Armed Forces of the United States.

286 trains at present enter and 284 trains depart from the City of Chicago at the 8 different passenger terminals. No through railroad passenger cars are operated through the City of Chicago, and therefore anyone making a trip via Chicago must be transported from one railroad terminal to the other, depending upon his destination. Regular time schedules in accordance with trial arrivals must be met and regular routes must be followed in order to assure connections with out-going trains.

• • •

As we have already taken advantage of every possible means of mileage reduction through more efficient
2292 operation, any curtailment in mileage would mean a reduction in passengers transported. It should be remembered that all of these passengers have previously paid for this transportation in their purchase of the railroad ticket, and, therefore can not be asked to find some other means of transportation which would guarantee them proper train connections. None of the existing transportation facilities in Chicago could handle this additional volume of traffic, which would mean that most of these passengers would miss their train connections.

2293 *Gov. Ex. 435 (Sept. , 1942, Letter from Parmelee to Director of the Office of Price Administration).*

We operate a transportation service between the various railroad stations in the City of Chicago under and pursuant to orders of the Bureau of Motor Carriers, Division 5, of the Interstate Commerce Commission, Numbers MC69245 and MC52371, true, correct and complete copies of which are attached hereto and make a part of this appeal. It will be noted that these orders require the operation of our bus service over fixed routes between the railroad stations and other termini. Pursuant to these orders we carry two classes of passengers: (a) passengers who pay a standard cash fare and (b) passengers who are traveling on coupons issued by the various railroad companies with which we have contractual arrangements, as part of the through railroad tickets purchased by such pasengers for their interstate journeys. In the case of these passengers the transporation charge is paid by the railroads and we serve as a continuation of the railroad journey of each passenger.

. . . the general public avail themselves of our transportation service either through the payment of a standard fare or through the purchase of railroad tickets which entitle

them to a coupon permitting them to use our service. Every member of the general public is therefore entitled to use our service.

The Parmelee Transfer Service which we have described above, was founded in 1854, has been in continuous
2294 operation since that date, and is recognized by the railroads and the general public as a necessary and important link in inter-railroad station transportation in Chicago. We currently transport approximately 175,000 passengers a month, traveling less than 75,000 miles to effect such transportation, and at present are operating at the rate of approximately 10,000,000 passenger miles during each monthly period. Attention is called to the fact that of the passengers transported, approximately 100,000 represent troop movements and other necessary army transportation, and our service has been so organized that we have effectively accomplished transportation of members of the armed forces on capacity buses on less than two hours' notice from the authorities.

Gov. Ex. 436 (January 12, 1943, Letter from Markin to Passolt)

I am transmitting herewith agreement in connection with the LaSalle Street Station which was signed by Mr. Crowley.

Gov. Ex. 438 (Agreement between Parmelee and the New York, Chicago & St. Louis Railroad Company)

WHEREAS, Nickel Plate operates a line of railway into the LaSalle Street Station in the City of Chicago, County of Cook and State of Illinois, and Parmelee Company is engaged in the business of transporting and transferring passengers and their baggage between said station and other points in said city; and

2295 WHEREAS, Parmelee Company desires that Nickel Plate shall carry, without charge, upon its passenger trains, between said station and Englewood, the agents and employees of Parmelee Company, for the purpose of taking orders from passengers on incoming trains for the transportation of such passengers and/or the transfer of their baggage from said station to other points in the City of Chicago in the vehicles of Parmelee Company; and

WHEREAS, Nickel Plate, desiring to offer to its passengers the service of Parmelee Company upon its train and in said station, is willing so to carry said agents and employees,

on being indemnified by Parmelee Company against any loss which may be incurred in so doing; . . .

* * *

FIRST: Nickel Plate agrees to carry, free of charge, upon its passenger trains, the agents and employees of Parmelee Company, when on duty and in appropriate uniform, between said station and Englewood, and to allow them to come and be upon its premises in so far as may be necessary for the sole purpose of transacting the business of Parmelee Company, as herein set forth. Such agents and employees of Parmelee Company shall, when on the trains or premises of Nickel Plate, be subject to the orders of the Superintendent of Nickel Plate, who may determine the number of such agents and employees, upon what trains they shall be carried, and may make regulations governing the said service upon its said trains and premises; and Parmelee Company agrees that it will promptly remove therefrom any of its said agents or employees whenever personally objectionable to said Superintendent, upon written request of said Superintendent.

SECOND: Nickel Plate agrees that it will not grant any right or privilege to transact similar business on any of its trains entering the City of Chicago or upon its premises, to any person, firm or corporation other than Parmelee Company during the life of this agreement; and that it will, for the like period, refuse to permit, so far as it may lawfully do so, the transaction of any such business on any of its trains or on its premises, by any person, firm or corporation other than Parmelee Company; and that it will, for the like period, in so far as it may lawfully do so, refuse to sell tickets or permit them to be sold over its line, routing passengers for such transportation in or through the City of Chicago by any other person, firm or corporation than Parmelee Company.

THIRD: Nickel Plate further agrees that it will not redeem, pay or account for any used ticket coupon or similar document, providing to the purchaser the right of transportation by means of the vehicles of Parmelee Company, from or to any person, firm or corporation other than Parmelee Company, and that it will account and pay to Parmelee Company, for the transfer from the
2296 station of any railroad company or from the dock of any steamboat line entering said City of Chicago to said LaSalle Street Station of any passenger holding transportation originating on any of said lines entitling him to

transportation beyond said City of Chicago on the line of Nickel Plate or its connections, or for baggage originating on any of said lines checked through to points beyond said city on the line of Nickel Plate or its connections, the following sums, to-wit: Seventy-five cents (75¢) for the transfer of each adult passenger holding full-fare transportation; and Thirty-eight cents (38¢) for the transfer of each child holding half-fare transportation, together with baggage for which through checks over the lines of Nickel Plate are held, payment to be made by voucher upon receipt of statement with transfer coupons or checks attached, or with other statisfactory evidence that such transfer service has been performed.

FOURTH: In consideration of the premises, Parmelee Company agrees that it will have at said station, on the arrival of all regularly scheduled passenger trains and such other trains as may be designated by said Superintendent of Nickel Plate, a sufficient number of suitable vehicles to transfer properly and with reasonable dispatch to the other terminals and railway stations and steamboat docks in the city of Chicago all passengers arriving on all such trains who may desire such transfer or who hold through transportation beyond the City of Chicago entitling them to such transfer service, and that it will so carry all such passengers, together with their hand baggage provided they be entitled to such transportation, and, by means of suitable conveyances, will likewise transport the separate, or checked, ordinary travelers' baggage of incoming passengers who may engage the services of Parmelee Company, which may be committed to Parmelee Company to their or its proper destination in said city, and will likewise transfer all baggage checked through to points on or beyond the lines of other railroad or steamboat companies operated through or from said City of Chicago to the stations or docks of the other railroad or steamboat companies, and will deliver each and every piece of baggage so checked and transferred to the agent of said last mentioned railroad or steamboat company authorized to receive and forward the same.

Gov. Ex. 439 (Feb. 5, 1942, Letter from Wyatt of Parmelee to Crowley of Parmelee)

I quote from a letter signed by Chairmen of the Central Passenger Association and the Western Passenger Association and dated January 21, 1942:

"Effective with the date of the increase in passenger fares, the Parmelee transfer charge in Chicago be increased from .75¢ to .85¢ per capita."

2297 In view of the fact that the railroads are putting their fare increase into effect February 10th, 1942, it will be in order, on all coupons collected after midnight of February 9th, to bill the railroads at the higher rate.

I should appreciate being advised of any rate changes made by express and baggage companies operating in Chicago in the transferring of baggage, etc.

Gov. Ex. 440 (Nov. 25, 1942, Memo from Landman to Wyatt, with attachments consisting of letter dated Nov. 24, 1942 from Landman to Beggs of Central Passenger Association and Siddall, of Transcontinental Passenger Association, and a letter of Oct. 28, 1942 from Landman of Parmelee to Siddall of Western Passenger Association and Beggs of Central Passenger Association)

Enclosing copy of my letter to the Chairmen of the Central and Western Passenger Associations concerning agreement we have with the Terminal Lines of Chicago as to the settlement for baggage of military personnel transferred by our Company where passengers find their own way between stations.

Will you please notify our auditors in Chicago to bill the railroads on the basis outlined therein.

[11/25/42, Letter Landman to Beggs]

Your advice of November 21, that the offer of the Parmelee Company is accepted, to transfer baggage for military personnel at the rate of fifty cents (50¢) per individual, where the men are handled through Chicago in through cars:

Also, it is to be understood by the Parmelee Company that in billing the railroads reference will be made by us to the Main number, WMB number, or CPA number, as the case may be and that the charge will only apply where passengers are transferred, also in cases where the train commander desires to march the men across town for exercise and the passenger equipment goes through.

It is also understood by the Parmelee Company that the rate of fifty cents (50¢) applies to the charge per individual, regardless of the number of pieces we transfer for the individual.

These arrangements are to become effective as of December 1, 1942; and will remain in effect until discontinued by joint agreement.

[10/28/42, Letter Landman to Siddall and Beggs]

At conference with your gentlemen on the 27th inst. in connection with your letter of October 6th, concerning settlement for transfer of baggage when military personnel are handled through Chicago in through cars.

The question raised by the carriers as to what help the Parmelee Company will give them in connection
2298 with group movements through Chicago where the arrangements provide that the passenger equipment furnished for the men will be handled through switching district in Chicago, while their baggage is handled under check, or by request of the carriers to transfer from one railroad to another in Chicago by special baggage truck.

The Parmelee Company believes that their over-all charge of 85¢ per passenger and baggage is a minimum, just and reasonable charge considering all factors involved in the transfer service in Chicago, and that is true regardless of whether, in some cases, only the passenger is transferred, and in other cases, only the baggage is transferred, although in a large number of cases both baggage and passenger are transferred.

The Parmelee Company also realizes, however, that because of the high switching charges for transferring cars and trains through the Chicago switching district where through cars are operated, there is possible justification from a cooperative standpoint why the Parmelee Company might be willing to authorize a modified charge for the transfer of baggage under check when arrangements are made for the handling of passengers in through cars through Chicago.

Merely as a cooperative measure, and not conceding that the charge is remunerative, the Parmelee Company is willing to transfer baggage in such instances at the rate of 50¢ per piece of baggage, in the definite understanding that any change whatever in the charges or the method of handling other transfer traffic, including all military traffic, where the men are not handled in through cars through Chicago.

An interpretation of the handling of through cars is where the through car operates through Chicago, regardless of whether the men themselves leave the cars upon ar-

rival in Chicago and transfer themselves by walking or otherwise to the connecting line station. In the latter cases, the Parmelee Company will not be called upon to furnish the transfer service for the men.

I trust this arrangement would be agreeable to the carriers and the effective date will be made upon advice from you gentlemen.

Gov. Ex. 441 (Feb. 3, 1939, Letter from Fuller to Rank)

An order has been issued by the Interstate Commerce Commission, Bureau of Motor Vehicles, on February 1, 1939, that Parmelee is not subject to the provisions of the Motor Carrier Act of 1935, and that Parmelee has 30 days to show cause why its application for a certificate should not be dismissed.

You will recall that one of the reasons we made application without prejudice to our right to claim exemption from the provisions of the Act was to give us some semblance of a franchise to handle the baggage transfer business with the railroads in Chicago, thereby precluding competition in that field. I do not know whether it is your opinion that every effort should be made to make that part of Parmelee's operations come within the purview of the Act in order to preclude competition from arising in that particular sphere. Of course, no competition has arisen in the last ten years, and the possibilities of competition might be considered by the Board of Directors to be remote. Furthermore, I am not at all sure that we can establish the Company under the Act.

2299

I wish you would give some consideration to this point and let me know your instructions, as the time to file our defense to the order expires at the end of this month.

Gov. Ex. 442 (Feb. 8, 1939, Letter from Rank, President of Parmelee to Fuller)

We have your letter of February 3rd informing us that an order has been issued by the Interstate Commerce Commission, Bureau of Motor Vehicles, on February 1, 1939, that Parmelee is not subject to the provisions of the Motor Carrier Act of 1935, and that Parmelee has 30 days to show cause why its application for a certificate should not be dismissed.

It is our understanding that this order applies to the Passenger and Baggage Transfer business which we con-

duct in the City of Chicago. In this connection we wish to inform you that we have elected to discontinue any further efforts to secure a certificate under the Motor Carrier Act of 1935, and to accept as final the order issued by the Interstate Commerce Commission, Bureau of Motor Vehicles, that Parmelee Transportation Company is not subject to the provisions of that Act.

Gov. Ex. 443 (Sept. 15, 1944, Memorandum from C. P. G. Fuller for Directors of Parmelee)

When the Motor Carrier Act of 1935 was passed, it provided that those motor carriers who were in operation prior to the passage of the Act were entitled as a matter of right to a Certificate of Public Convenience and Necessity, both as contract and as common carriers, authorizing them to continue their operations without interference from the Interstate Commerce Commission or competitors or newly organized motor carriers, provided they came under the jurisdiction of the I.C.C.

At that time the then management of Parmelee Transportation Company concluded to make an application for a Certificate of Public Convenience and Necessity, reserving in such application the right to claim that the Act did not apply to them.

This decision was motivated by the following factors:

2300 (a) Failure to make the application would have subjected the directors to criticism as a possible surrender of rights to a Certificate of Public Convenience and Necessity.

(b) Coming under the jurisdiction of the I.C.C. would exempt the employees from the application of the Wage and Hour Act.

(c) The issuance of the certificate applied for would prevent any competitor or newly organized concern from taking over the transfer business in Chicago.

(d) The issuance of the certificate applied for would handicap or even preclude any state or municipal body from regulating the transfer activities of the company.

(e) If the company came under the Act, it would be exempt in the issuance of securities from the application of the Securities Act of 1933.

Gov. Ex. 444. (Plaintiff's interrogatory No. 28)

To Yellow, Cab Sales, and Checker. State whether you have at any time since January 1, 1929 approached any representative of any railroad with a terminal in the City of Chicago or any representative of a railroad terminal association in an attempt to enter into an understanding with such railroad or railroad terminal association by which you would carry railroad passengers between railroad stations in the City of Chicago. If you have so approached any such representative, state:

(a) The name of each railroad and railroad terminal association approached;
(b) The name of each representative thereof who was approached;
(c) When he was approached by you;
(d) The name of your representative who made the approach.

Gov. Ex. 445. (Yellow's answer to plaintiff's interrogatory No. 28)

Interrogatory 28: No.

Gov. Ex. 446. (Cab Sales' answer to plaintiff's interrogatory No. 28)

28. No.

Gov. Ex. 447. (Checker's answer to plaintiff's interrogatory No. 28)

28. (a) No.
(b), (c) and (d) Not applicable.

Gov. Ex. 448. (Plaintiff's interrogatory No. 29)

To Parmelee. Did you, at any time subsequent to
2301 January 1, 1929, attempt to obtain Chicago taxicab licenses, either from the City of Chicago or by purchase from a holder of such licenses? If so, state when each such attempt was made, and the name of each holder from whom you attempted to purchase licenses.

Gov. Ex. 449. (Parmelee's answer to plaintiff's interrogatory No. 29)

Parmelee Transportation Company did not, at any time subsequent to January 1, 1929, attempt to obtain Chicago taxicab licenses, either from the City of Chicago or by purchase from a holder of such licenses.

Gov. Ex. 450. (March 15, 1933, Minutes of Directors Meeting of Parmelee)

Present:

Paul C. L'Amoreaux — Harold Riegelman
Levin Rank — James A. Doherty
E. S. Higgins

being all of the Board of Directors and a quorum.

Mr. L'Amoreaux called the meeting to order and acted as Chairman thereof; and Mr. Rank acted as Secretary of the meeting and kept the minutes thereof.

* * *

The meeting approved the naming of Mr. Paul C. L'Amoreaux and Mr. Levin Rank as proxies for the stockholders at the annual meeting to be held on April 19, 1933, and/or any other persons selected by the Secretary of the Corporation.

* * *

The Chairman then stated that Yellow Taxi Corporation, New York, and National Transportation Co., Inc., operating subsidiaries of this Corporation (National Transportation Co., Inc. being wholly owned by Yellow Taxi Corporation, New York, of whose stock over 87% was owed by this Corporation), were contemplating the purchase, at the present time or in the near future, of 1,000 new Model T Checker taxicabs in the aggregate, which equipment was needed to replace existing equipment. Such taxicabs it was contemplated would be purchased partly in cash and the balance of the purchase price was to be represented by promissory notes secured by conditional sales contracts. He further stated that the seller, Checker Cab Sales Corporation, as a condition to accepting such promissory notes so secured, had requested that the promissory notes given by such subsidiaries be endorsed by this Corporation, and that this
2302 Corporation, in so far as it could legally do so, subordinate any claims it might have against such subsidiaries to the claim represented by such promissory notes, in order to insure the payment of the purchase price for said taxicabs. The Chairman further stated that negotiations for the purchase of these taxicabs had not as yet been completed, but that he considered it advisable to authorize the proper officers of this Corporation to act in accordance with the request of Checker Cab Sales Corporation upon the completion of negotiations.

After a full discussion and upon motion duly made and seconded, the following resolutions were unanimously adopted:

RESOLVED that this Board of Directors hereby consents to the purchase, at the present time or in the near future, by Yellow Taxi Corporation, New York and National Transportation Co., Inc. from Checker Cab Sales Corporation, of a total of 1,000 Model T Checker taxicabs, on such terms and conditions as shall be approved by Mr. Levin Rank, Treasurer of this Corporation, and as outlined to this meeting by the Chairman.

FURTHER RESOLVED that the Treasurer or the Vice-President of this Corporation be and each of them hereby is severally authorized to endorse the promissory note(s) given by Yellow Taxi Corporation, New York, and the promissory note(s) given by National Transportation Co., Inc. in connection with the purchase of said taxicabs, and that this Corporation hereby consents to the endorsement by Yellow Taxi Corporation, New York of such note(s) given by National Transportation Co., Inc.

• • •

FURTHER RESOLVED that Mr. Levin Rank, Treasurer of this Corporation, be and he hereby is authorized and directed to conclude the negotiations now being conducted for the purchase by said subsidiaries from Checker Cab Sales Corporation of 1,000 Model T taxicabs, and to take any action on behalf of this Corporation that may be necessary or convenient to consummate such purchase by said subsidiaries.

Gov. Ex. 451. (Feb. 26, 1934, Memorandum from Rank to Oakland)

I am enclosing herewith a communication received from the Motor and Equipment Manufacturers Association. As you know, we purchase little or nothing of cab equipment or supplies except through affiliated companies. Consequently, there does not seem to be any reason, from my point of view, for filing this report.

2303 *Gov. Ex. 452 (Plaintiff's Interrogatory No. 5)*

To Cab Sales and Yellow. With respect to the statements in your answers to paragraph 7 of the amended complaint that some but not all, of the taxicabs purchased by you have been manufactured by CCM, state:

(a) The number of motor vehicles purchased by you from CCM for use as cabs during each of the calendar years 1929 to 1946, inclusive and during the period from January 1, 1947 to August 29, 1947.

(b) The number of motor vehicles for use as cabs purchased by you from others than CCM during:
(1) Each of the calendar years 1929 to 1945, inclusive;
(2) January and February 1946;
(3) The period from March 1946 to August 1947, inclusive.

Gov. Ex. 453 (Yellow's answer to plaintiff's interrogatory No. 5)

5 (a).	1929	1,035	1936	620
	1930	1,165	1937	30
	1931	1,000	1938	none
	1932	1	1939	none
	1933	none	1940	787
	1934	none	1941	663
	1935	1,000	1942–8/29/47	none
5 (b).	1929–1943	none	Jan. Feb. 1946	3
	1944	1	Mch. 1946—Aug.	
	1945	172	1947	1,137

Gov. Ex. 454 (Cab Sales' answer to plaintiff's interrogatory No. 5)

Year	*From CCM*	*From Others*	*Year*	*From CCM*	*From Others*
1929	None	None	1941	550	None
1930	101	None	1942	None	None
1931	212	None	1943	2	None
1932	107	None	1944	None	58
1933	None	35	1945	None	None
1934	None	158	1946	None	None
1935	500	None	Jan. 1, 1947		
1936	None	None	Aug. 29, 1947	None	
1937	None	None	Jan. & Feb. 1946		3
1938	50	None	March 1946		
1939	None	116	Aug. 1947		692
1940	450	100			

2304 *Gov. Ex. 455 (Plaintiff's interrogatory No. 4)*

To CCM and Parmelee. With respect to your denial of the allegation of paragraph 6 of the amended complaint that CCM ships motor vehicles for use as cabs to Parmelee in Chicago, Illinois, state:

(a) The number of motor vehicles shipped by CCM from its factory in Kalamazoo, Michigan, to Parmelee in

Chicago during each of the calendar years 1929 to 1946, inclusive and during the period from January 1, 1947 to August 29, 1947.

(b) The number of vehicles in each year's shipment that were manufactured by CCM;

(c) The number of vehicles in each year's shipment that were trucks;

(d) The number of vehicles in each year's shipment that were passenger carrying vehicles, and the passenger carrying capacity of each.

Gov. Ex. 456 (CCM's answer to plaintiff's interrogatory No. 4)

4. (a)

1927	None	1939	41
1930	None	1940	None
1931	25	1941	25
1932	None	1942	None
1933	None	1943	None
1934	None	1944	None
1935	None	1945	None
1936	27	1946	None
1937	44	Jan. 1, 1947	
1938	1	Aug. 29, 1947	None

(b) All except 26 shipped in 1939 and 25 shipped in 1941, and with respect to these 51 the bodies were manufactured by CCM.

(c) 26 in 1939 and 25 in 1941

(d)

1931	25	eight-passenger vehicles
1936	27	eight-passenger vehicles
1937	43	eight-passenger vehicles
	1	eleven-passenger vehicle
1938	1	eleven-passenger vehicle
1939	15	eleven-passenger vehicle

Gov. Ex. 457 (Parmelee's answer to plaintiff's interrogatory No. 4)

(a) The number of motor vehicles shipped by Checker Cab Manufacturing Corporation from its factory in
2305 Kalamazoo, Michigan to Parmelee Transportation Company in Chicago during each of the calendar years from 1929 to 1946, inclusive, and during the period from January 1, 1947 to August 29, 1947, was as follows:

1929	None	1939	41
1930	None	1940	None
1931	25	1941	25
1932	None	1942	None
1933	None	1943	None
1934	None	1944	None
1935	None	1945	None
1936	27	1946	None
1937	44	January 1, 1947	
1938	1	to August 29, 1947	None

(b) All of the vehicles listed above with the exception of 26 purchased in 1929 and 25 purchased in 1941 were manufactured by Checker Cab Manufacturing Corporation, and the bodies of those were manufactured by Checker Cab Manufacturing Corporation.

(c) Twenty-six of the vehicles shipped in 1939 and 25 in 1941 were trucks.

(d) The number of vehicles that were passenger carrying vehicles, and the passenger-carrying capacity of each, was as follows:

1931	26	eight passenger vehicles
1936	27	eight passenger vehicles
1937	43	eight passenger vehicles and
	1	eleven passenger vehicle
1938	1	eleven passenger vehicle
1939	15	eleven passenger vehicles

None of the aforesaid passenger vehicles can be used as cabs in Chicago, Illinois.

Gov. Ex. 458 (Plaintiff's interrogatory No. 6)

To Parmelee. With respect to the statement in your answer to paragraph 7 of the amended complaint that some but not all of the taxicabs purchased by your subsidiaries have been manufactured by CCM, state (Answer for each subsidiary only for those periods of time during which you have owned part of its stock):

(a) The number of motor vehicles purchased by each of your subsidiaries for use as cabs during each of the calendar years 1929 to 1946, inclusive, and during the period from January 1, 1947 to August 29, 1947;

(b) The number of motor vehicles for use as cabs purchased by each of your subsidiaries from others than CCM during:

2306 (1) Each of the calendar years 1929 to 1945, inclusive;

(2) January and February 1946;

(3) The period from March 1946 to August 1947, inclusive.

Gov. Ex. 459 (Parmelee's answer to plaintiff's interrogatory No. 6)

MOTOR VEHICLES PURCHASED BY YELLOW TAXI COMPANY OF MINNEAPOLIS FOR USE AS TAXICABS

Year	*Total Number Purchased*	*Number Purchased From Others Than Checker Cab Manufacturing Corp.*
1929	None	
1930	4	None
1931	174	None
1932	None	
1933	None	
1934	None	
1935	None	
1936	125	None
1937	None	
1938	None	
1939	2	None
1940	115	None
1941	2	2
1942	None	
1943	None	
1944	3	3
1945	2	2
1946	11	11
January 1, 1947 to Aug. 29, 1947	122	122
Jan. & Feb. 1946	—	2
March 1946 to Aug. 1947, incl.	—	131

MOTOR VEHICLES PURCHASED BY YELLOW CAB COMPANY OF PITTSBURGH FOR USE AS TAXICABS

Year	*Total Number Purchased*	*Number Purchased From Others Than Checker Cab Manufacturing Corp.*
1929	148	None
1930	33	33**
1931	400	None
1932	None	
1933	None	
1934	3	3
1935	1	None

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Year	Total Number Purchased	Number Purchased From Others Than Checker Cab Manufacturing Corp.
1936	137	None
1937	15	15**
1938	None	
1939	None	
1940	*125	None
1941	125	None
1942	25	None
1943	38	38**
1944	47	47**
1945	None	
1946	81	81
Jan. 1, 1947 to Aug. 29, 1947	530	530
Jan. & Feb. 1946	—	None
March 1946 to Aug. 1947, incl.	—	611

* Traded 1940 models for 1941 models to Checker Cab Manufacturing Corporation.
** Purchased from National Transportation Co., Inc.

Motor Vehicles Purchased by Pittsburgh Transportation Company for Use as Taxicabs

Year	Total Number Purchased	Number Purchased From Others Than Checker Cab Manufacturing Corp.
1929	100	None
1930	100	None
1931	None	
1932	None	
1933	None	
1934	2	2
1935	1	None
1936	126	None
1937	15	15**
1938	None	
1939	None	
1940	*125	None
1941	125	None
1942	25	None
1943	37	37**
1944	13	13**
1945	None	
1946	None	

* Traded 1940 models for 1941 models to Checker Cab Mfg. Corp.
** Purchased from National Transportation Co., Inc.

2308 MOTOR VEHICLES PURCHASED BY NATIONAL TRANSPORTATION CO., INC. FOR USE AS TAXICABS

Year	Total Number Purchased	Number Purchased From Others Than Checker Cab Manufacturing Corporation
1929	None	
1930	None	
1931	None	
1932	800	800*
1933	815	None
1934	459	149*
1935	874	874*
1936	2,000	None
1937	None	
1938	None	
1939	None	
1940	1,201	None
1941	799	None
1942	50	50*
1943	None	
1944	None	
1945	None	
1946	None	
Jan. 1, 1947 to Aug. 29, 1947	None	

* Purchased from affiliated companies.

2309 *Gov. Ex. 460 (Stipulation No. 1)*

Stipulation covers (1) use of photostatic copies in lieu of originals, and (2) acceptance by counsel for defendant corporations of subpoena for available officers or employees.

Gov. Ex. 461 (Stipulation No. 2)

Stipulation on fact that defendants will not offer objections with reference to specific admissions.

Gov. Ex. 462 (Stipulation No. 3)

Stipulation regarding (1) testimony employees of railroads would give regarding interstate character of railroad passengers purchasing tickets with Parmelee coupons attached, (2) that each defendant, if called as a witness by the plaintiff, would testify to any fact alleged in the amended complaint, which is admitted by the answer of such defendant, and (3) a similar stipulation as to facts admitted by defendants in answers to plaintiff's interrogatories.

Gov. Ex. 463 (Copy of plaintiff's request for admissions under Rule 36 as directed to defendants Yellow Cab Company and Chicago Yellow Cab Company, Inc.)

Gov. Ex. 464 (Reply of defendants Yellow Cab Company and Chicago Yellow Cab Company, Inc., to plaintiff's request for admissions under Rule 36)

Gov. Ex. 465 (Plaintiff's request for admissions under Rule 36 directed to defendant Parmelee.)

Gov. Ex. 466 (Parmelee's reply to plaintiff's request for admissions under Rule 36)

Gov. Ex. 467 (Plaintiff's request for admissions under Rule 36, as directed to defendants Cab Sales and Checker)

Gov. Ex. 468 (Reply of defendant Cab Sales to plaintiff's request for admissions under Rule 36)

Gov. Ex. 469 (Reply of defendant checker to plaintiff's request for admissions under Rule 36)

Gov. Ex. 470 (Plaintiff's request for admissions under Rule 36, as directed to defendants CCM and Morris Markin)

2310 *Gov. Ex. 471 (Reply of defendant Morris Markin to plaintiff's request for admissions under Rule 36)*

Gov. Ex. 472 (Reply of defendant CCM to plaintiff's request for admissions under Rule 36)

Gov. Ex. 473 (Feb. 18, 1946—Letter from Wendell Berge, Assistant Attorney General, Dept. of Justice, by Melville Williams, to Chicago Yellow, attention Samuels, requesting permission to examine certain records of that company)

Gov. Ex. 474 (Jan. 22, 1946, Registered letter from Public Vehicle License Commissioner to Yellow Cab Company)

BE IT RESOLVED, that all of the taxicab licensees be required to put into service at once all taxicabs licensed pursuant to ordinance and the Public Vehicle License

Commissioner hereby is authorized and directed to enforce the provisions of the taxicab ordinance to compel full operation of 3,000 taxicabs in the city of Chicago and unless the licensees provide said 3,000 taxicabs on or before January 15, 1946 the Public Vehicle License Commissioner is authorized and directed to take all steps that are necessary for the licensing of additional taxicabs in the city of Chicago.

Subsequent to the date of this resolution, this office, consistent with the action outlined by the City Council, made an exhaustive survey of facts and your records relative to the operation of cabs and it was found the following numbered cabs have not been operated within a reasonable time—

(234 cabs listed by number)

In compliance with the resolution as passed by the City Council of the city of Chicago on December 28th, 1945, as recited in full above, you are hereby notified that if the above numbered cabs are not in operation within five days from date of this notice, said licenses will be cancelled and issued to others as provided by the resolution.

Gov. Ex. 475 (Jan. 24, 1946—letter from Yellow by Benjamin Samuels, to Edw. J. Gorman, Public Vehicle License Commissioner)

We beg to acknowledge receipt of your letter dated January 22nd.

We wish to advise you that we regard your letter as a most radical, unreasonable and arbitrary threat, and at the same time an absolutely illegal act contrary to the provisions of the contract ordinance under which we are operating.

2311 . Your recent examination and inspection of our taxicabs and the questioning of our garage managers clearly indicated that some taxicabs can never be restored to operation, due to inability to obtain certain needed parts; and many other taxicabs can only be repaired if we are able to obtain needed parts and mechanics and no one can determine when parts and mechanics will be available. Many of the taxicabs specified in your letter are already repaired and in operation.

You and the members of our City Council know that the present condition of our taxicabs is due to the fact that they have been driven many thousands of miles more than would have been the case under normal operations, and that the

condition of these taxicabs is due entirely to the war, the recent strikes and other causes, all of which are beyond our control. You know that as a result of the war it was impossible for us to obtain a new fleet of taxicabs and even necessary repair parts and labor, and yet we have rendered more passenger carrying miles and served more passengers than we ever did during normal times.

Now you inform us that unless we repair and place in service 234 cabs within five days, you threaten to take away 234 taxicab licenses, which are a very valuable property right, and give them away to others. Your letter, therefore, leaves us no other course than to seek the protection of our contract rights in the Courts of Cook County.

Gov. Ex. 476 (Jan. 22, 1946, Registered letter from Public Vehicle License Commissioner to Checker Taxi Company.)

(Letter is substantially the same as Gov. Ex. 474, except that it lists by number 87 cabs which have been found not to have been operated within a reasonable time.)

Gov. Ex. 477 (Jan. 24, 1946, letter from Checker, by M. M. Sokoll to Edward J. Gorman, Commissioner)

Receipt is herewith acknowledged of your letter dated January 22, 1946, in which you recite a resolution adopted by the City Council on December 28, 1945.

We do not question your action, as directed in this resolution, in making a survey of our records relative to the operation of our cabs. However, we consider unjust and unreasonable your notice to us under this resolution to put 87 cabs on the streets within five days, in view of the shortage of materials, parts and manpower, with which you are entirely familiar.

2312 While you, as Commissioner, are endeavoring to comply with the resolution passed by the City Council, we will take the necessary legal steps to prevent your issuing to others any licenses issued to us under the contract ordinance.

Gov. Ex. 478 (Feb. 28, 1946, Chicago City Council proceedings, page 5166)

Be It Ordained By The City Council of The City Of Chicago:

SECTION 1. It is hereby found and declared that the present demand for taxicab service in the City of Chicago is

in excess of that provided by 3,000 taxicabs now licensed for operation.

SECTION 2. Subject to the provisions of Chapter 28 of the Municipal Code of Chicago and the provisions of this ordinance, the Public Vehicle License Commissioner is authorized to issue not to exceed 275 additional taxicab licenses as public convenience and necessity may require. Said licenses shall be purely personal privileges of the licensees for the license period, unless sooner revoked as provided in said Chapter 28 of the code. Said licensees shall not acquire any rights under or by virtue of an ordinance granting permission and authority for the operation of taxicabs within the city and for the appointment of a public vehicle license commissioner, passed by the City Council on May 18, 1934, as subsequently amended, nor shall said licenses vest in the licensees any contractural or property rights whatever, or any right to the renewal of any of said licenses upon expiration of the license period thereof. Said licenses shall not be subject to assignment, lease or other voluntary or involuntary transfer except to permit replacement of a taxicab for that licensed.

SECTION 3. In addition to the annual license fee provided in Section 28-8 of the Municipal Code of Chicago every licensee under this ordinance shall pay to the City quarter-annually in advance the sum of $5.00 for each taxicab as compensation for the use of the streets and other public ways of the city.

SECTION 4. This ordinance shall be effective upon its passage and approval.

Gov. Ex. 179 (Feb. 6, 1948—Proceedings of Chicago City Council with reference to authorization of issuance of 950 additional taxicab licenses)

Section 1. It is hereby found and declared that the present demand for taxicab service in the City of Chicago is in excess of that provided by 3,000 taxicabs now licensed for operation.

2313 Section 2. Subject to the provisions of Chapter 28 of the Municipal Code of Chicago and the provisions of this ordinance, the Public Vehicle License Commissioner is authorized to issue not to exceed 950 additional taxicab licenses as public convenience and necessity may require. Said licenses shall be purely personal privileges of the licensees for the license period, unless sooner revoked as provided in said Chapter 28 of the code. Said licensees

shall not acquire any rights under or by virtue of an ordinance granting permission and authority for the operation of taxicabs within the city and for the appointment of a public vehicle license commissioner, passed by the City Council on May 18, 1934, as subsequently amended, nor shall said licenses vest in the licensees any contractual or property rights whatever. Such licenses may be renewed at the expiration thereof provided that the renewal privilege shall not be construed as a vested right which shall in any case prevent the City Council from decreasing the number of licenses to be issued. Said licenses shall not be subject to assignment, lease or other voluntary or involuntary transfer except to permit replacement of a taxicab for that licensed.

No one but the actual licensee shall operate said taxicab unless the actual ownership of the taxicab is in more than one person. In the event that two persons are joint owners of said taxicab, then the names of both such owners shall appear upon the taxicab as provided by section 28-19 of said code.

Section 3. In addition to the annual license fee provided in Section 28-8 of the Municipal Code of Chicago every licensee under this ordinance shall pay to the City quarter-annually in advance the sum of $5.00 for each taxicab as compensation for the use of the streets and other public ways of the city.

Section 4. Section 28-8 of the Municipal Code of Chicago is amended by striking out the last sentence of said section and substituting the following:

"Such license fees shall be in addition to motor vehicle taxes and in addition to compensation required to be paid for the use of the streets and other public ways of the city."

Section 5. Section 28-18 of the Municipal Code of Chicago is amended to read as follows:

28-18. Discontinuance of service.) Every taxicab shall be operated regularly to the extent reasonable necessary to meet the public demand for taxicab service. In the event that the service of any taxicab is discontinued excepting on account of strikes, acts of God or causes beyond the control of the licensee, the commissioner may give written notice to the licensee to restore such taxicab to service, and if the same is not so restored within five days
2314 after such notice, the commissioner, in his discretion, may recommend to the mayor that the license for

such taxicab be revoked and the mayor, in his discretion may revoke same.

Section 6. Section 28-19 of said code is amended by striking out the period at the end of said section, as printed, and substituting therefor a semicolon and the following words:

"and no other name whatsoever shall appear on said main panel or anywhere else on said vehicle."

Section 7. Section 28-4 of said code is amended to read as follows:

28-4. Insurance required.) No public passenger vehicle shall be licensed unless the owner of said vehicle has filed with the commissioner a continuing policy or policies of insurance, in full force and effect, in a solvent and responsible company authorized to do business in the state, to be approved by the commissioner, covering liability for any injury to or death of any person or for damage to property resulting from negligence in the operation of such vehicle during the license period.

A policy of insurance may cover one or more public passenger vehicles but each vehicle shall be insured for the sum of $5,000. for injuries to or death of any person and for the sum of $10,000. for any one accident and for the sum of $2,000. for property damage. Such insurance shall be in addition to all insurance required to be secured under the provisions of any law of the State now in force or which may hereafter be enacted. Such policy of insurance shall provide for the payment and satisfaction of any final judgment rendered against any person driving such vehicle with the consent of the licensee for any injury or death or damages to property and shall provide that suit may be brought in any court of competent jurisdiction upon such insurance policy by the owner of any such judgment. Such insurance policy shall contain a description of each public passenger vehicle, giving the manufacturer's name and number, state license number, and public passenger vehicle license number.

Whenever any public passenger vehicle is not insured in accordance with the provisions of this section the commissioner shall recommend to the mayor the revocation of the license for said vehicle and the mayor shall revoke the same.

Gov. Ex. 480 (March 1, 1948—Amendment by City Council of Chicago to regulations governing taxicabs)

Section 1. Section 2 of an ordinance authorizing the issuance of additional taxicab licenses and amending various provisions of the ordinance relating to the operation of taxicabs, passed on February 6, 1948, and appearing on pages 1918-1919 of the Council Journal of
2315 that date, is amended by striking out the second paragraph, as printed, and inserting in lieu thereof the following paragraph:

> Not more than two licensed drivers, one of whom is the owner of the licensed taxicab, are permitted to operate said taxicab during any twenty-four hour period; provided, that the owner, personally, shall drive the same for not less than eight hours of said twenty-four period. The owner may designate any licensed driver to operate said taxicab and the commissioner shall issue to said driver a certificate or card of identification as the authorized driver of said taxicab. The commissioner shall not issue any certificate or card of identification to any other driver for said taxicab except upon surrender and cancellation of any outstanding certificate or card of identification for said taxicab. In the event that two persons are joint owners of said taxicab, no person other than one of the owners is permitted to drive the same, and the names of both such owners shall appear upon the taxicab as provided by section 28-19 of the code. The operation of any such taxicab by any other person shall be cause for immediate revocation of any license granted hereunder.

Section 2. Section 28-19 of said code is amended to read as follows:

28-19. Identification on taxicabs.) Every taxicab licensed under the provisions of this chapter shall have the name of the owner and the public passenger vehicle number plainly painted in letters at least two inches in height in the center of the main panel of the rear door of said vehicle. "In addition thereto, the telephone number of the licensee may appear on such taxicab at such places and in such manner as may be approved by the commissioner." "The commissioner may grant to any owner of a licensed taxicab, upon proper application therefor, the exclusive right to use one or more distinctive color schemes as follows: . . .

Gov. Ex. 481 (April 10, 1946—Letter from Superintendent of Minneapolis, Minnesota, Department of Licenses, etc. to George B. Haddock, Department of Justice)

In reply to your letter of April 4, addressed to the Commissioner of Taxicabs making inquiry as to the total number of taxicab licenses issued, etc., in the City of Minneapolis, we wish to report the following:

Year	Total No. Issued	Yellow Cab Co.
1931	492	158 (issued to Trustees of Mpls. Taxi & Baggage Co.)
1932	432	175
1933	257	175
1934	252	174
1935	248	169
1936	225	140
1937	210	125
1938	210	125
1939	210	125
1940	210	125
1941	210	125
1942	210	125
1943	210	125
1944	214	119
1945	214	125
1946	214	125

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I believe this summarizes the total of the information requested.

Gov. Ex. 482 (Dates certain cabs of Yellow were last operated prior to January 15, 1946)

Gov. Ex. 483 (Dates certain cabs of Checker were last operated prior to January 15, 1946)

Gov. Ex. 484 (Aug. 2, 1933—Letter from M. L. Middlekauff, of Kirkland, Fleming, Green & Martin, to Yellow Cab Company)

Reference is made to the contemplated transaction for the purchase by your corporation of 50,000 shares of the capital stock of Chicago Yellow Cab Company, Inc., a New York corporation, from Parmelee Transportation Company, a Delaware corporation . . .

• • •

We have no knowledge as to whether or not the 50,000 shares of Chicago Yellow Cab Company stock which the

Parmelee Transportation Company proposes to sell to your corporation is all or substantially all of its property. We have, however, as attorneys for Yellow Cab Company and Chicago Yellow Cab Company, been served with notice by attorneys for Checker Cab Manufacturing Corporation, which purports to own a majority of the capital stock of Parmelee Transportation Company, that as such majority stockholder it objects to the sale by the Parmelee Transportation Company of said shares of stock of Chicago Yellow Cab Company, Inc., and that in the event such sale is authorized by the Board of Directors or is made by the officers of the Parmelee Transportation Company, action will be taken either to enjoin said sale or set the same aside, and also action taken against your corporation for the purpose of preventing such purchase by you or setting the same aside if the same is accomplished.

2317 *Gov. Ex. 485 (Aug. 10, 1933—Memorandum of Agreement between Morris Markin and Cord Corporation, signed on behalf of latter by by R. S. Pruitt)*

1. Morris Markin and Cord Corporation agree to form and hereby do form a syndicate for the purpose of acquiring control of and dealing in the stock of Checker Cab Manufacturing Corporation, a New Jersey corporation, such syndicate to continue for a period of two (2) years from the date hereof unless earlier terminated as hereinafter provided.

2. Markin agrees to transfer and hereby does transfer to the syndicate the option dated May 20, 1933, as amended and extended, he holds from Laird & Co. expiring August 15, 1933, to purchase 58,837 shares of Checker stock at $7 a share, and agrees to assign and hereby does assign to the syndicate 6,500 shares of Checker stock at the price of $7 a share.

3. Cord corporation agrees to make available to the syndicate, and hereby loans to the syndicate the sum of $411,859, which shall be used to exercise said option and purchase said 58,837 shares of stock at $7 a share.

4. All the profits and losses of the syndicate shall be shared equally between the parties hereto, and all the commitments of the syndicate shall be likewise so shared. The syndicate shall be managed by Cord Corporation, which shall have sole discretion to buy, sell and trade in Checker stock for the account of the syndicate.

5. Markin also agrees to deposit and pledge with Cord Corporation all shares of the Class A Stock of The Waverly Corporation owned by him and P. C. L'Amoreaux (the same being not less than 70% of said Class A Stock), and all shares of the Common Stock of Cab Sales & Parts Corporation owned by him and P. C. L'Amoreaux (the same being not less than 97% of said stock), and Cord Corporation shall have the exclusive right to vote said stock as well as all Checker Stock owned by the syndicate for the period of this agreement.

6. During the period of this agreement the directors of Checker Cab Manufacturing Corporation shall be E. L. Cord, L. B. Manning, W. H. Beal, R. S. Pruitt, Markin, J. A. King and R. E. Oakland; E. L. Cord shall be Chairman of the Board, Markin, President; W. H. Beal, Chairman of the Executive Committee, which shall consist of W. H. Beal, Markin and L. B. Manning, and Cord Corporation shall have the right to name the secretary and have the custody of the corporate records of Checker Cab Manufacturing Corporation. Markin also agrees that, if Cord Corporation so requests at any time, he will to the fullest extent of his ability cooperate in every possible way to put representatives of Cord Corporation in control of Parmelee Transportation Company, Chicago Yellow Cab Company, Inc., Checker Taxi Company, The Waverly Corporation, Cab Sales & Parts Corporation and The Transportation Management Corporation. The parties hereto agree
2318 to take all action necessary to effect the election of the officers and directors provided for in this paragraph.

7. During the period of this agreement the compensation of Morris Markin and P. C. L'Amoreaux from any subsidiary or affiliated companies of Checker Cab Manufacturing Corporation and/or Parmelee Transportation Company shall not be increased without the written consent of Cord Corporation.

8. When, as a result of the operations of the syndicate, there shall be repaid to Cord Corporation the money advanced by it, to wit, $411,859, and there shall be repaid to Markin $45,500, being the agreed value of the 6,500 shares of Checker stock contributed to the syndicate by him, this agreement shall terminate and the balance of the Checker stock and cash then owned by the syndicate shall be divided equally between the parties hereto, except that, in view of the fact that Markin was to contribute to the syndicate 10,000 shares of Checker stock and instead of so doing only

contributed 6,500 shares, the Cord Corporation in the final division shall receive 3,500 shares more of said stock than Markin, or, at Markin's election, he shall pay Cord Corporation for 1,750 of said 3,500 shares the average price received on the liquidation and sale of the Checker stock owned by the syndicate, and, in either case, Markin shall receive a credit for said 3,500 shares of stock at the agreed valuation of $7 per share.

9. If the syndicate shall not be wound up under the provisions of paragraph 8 prior to two years from the date hereof, Markin shall thereupon pay to Cord Corporation the net amount of the money advanced by it to the syndicate plus interest thereon at the rate of 6% per annum, and shall be entitled to have delivered to him all the securities in the syndicate and the stock of The Waverly Corporation and of Cab Sales & Parts Corporation pledged to Cord Corporation hereunder; if Markin shall fail to make such payment within thirty days after demand, Cord Corporation may sell, at public or private sale without further notice or advertisement, all or any part of said securities, and after crediting the proceeds to the expenses of such sale and to the balance due by Markin to pay the over-plus, if any, to Markin, but Markin shall remain liable for any deficiency. The syndicate, or any member thereof, shall have the right to bid for such securities at any sale, free from any right of redemption.

10. This agreement and the rights hereunder shall not be assignable by any party hereto without the written consent of the other first had, but this agreement shall inure to the benefit of and be binding upon the successors, legal representatives and assigns of the parties hereto.

2319 *Gov. Exhibit 2*

MINUTES of a special meeting of the Board of Directors of CHECKER CAB MANUFACTURING CORPORATION, held at 165 Broadway, Borough of Manhattan, City and State of New York, on the 5th day of April, 1929.

There were present the following directors, constituting a quoram: Messrs. Markin, Adams, Weiss, Polansky, Ludington, Haveron, Halff, Gillespie, and Rothenberger.

The meeting was held on notice duly given. Mr. Markin acted as Chairman and Mr. Haveron acted as Secretary of the meeting.

Mr. Markin stated that, pursuant to discussions which he had had with the directors from time to time, he had

been working on a plan whereby this Company might obtain a sustained production by insuring recurring orders from large operating companies; that for several months back he had been working with Mr. Ernest H. Miller, the President of Yellow Taxi Corporation, New York, for the organization of a company which should, in effect, be an amalgamation of that company and other large operating companies; that Sisto & Co. had indicated its willingness to finance a corporation to be known as Parmelee Transportation Company, which would acquire about 6% of the capital stock of Yellow Taxi Corporation, New York, about 26% of the capital stock of Chicago
2320 Yellow Cab Company, Inc., and over 90% of the capital stock of The Parmelee Company; that under the plan the Parmelee Transportation Company would issue $5,000,000 of 6% convertible debentures, $1,000,000 of 6% convertible preferred stock and 250,000 shares of common stock, for the purpose among other things of acquiring the stocks of the operating companies before mentioned; and the stocks of other operating companies; that under the plan, a management company controlled by the Transportation Company would enter into a management contract for the management of the operating companies; that he was to receive compensation at the rate of $25,000 a year for consulting with and advising the management company and the Transportation Company; that he and Mr. Miller were each to receive options on 25,000 shares of the common stock of the Transportation Company at $30 a share (the same price as the conversion price on the debentures and preferred stock); that it was proposed that this Company should invest $1,000,000 in cash in the purchase of $1,000,000 face amount 6% convertible preferred stock, which would constitute a security senior to the 250,000 shares of common stock which were to be marketed by Sisto & Co. and their associates; that the bankers of the Transportation Company were insistent that he purchase a substantial block of common stock of the Transportation Company, which he was pre-
2321 pared to do to make the plan possible. Mr. Markin further stated that he and other large stockholders of the Company considered the advantages to this Company so substantial that they had consented to give to the bankers of the Transportation Company, options on a substantial block of stock of Checker Cab Manufacturing Corporation

for a period of one year at a price just above the present market. So further stated that it was proposed that a sales company affiliated with the Transportation Company would agree with this Company to endeavor to promote sales of cabs of this Company, and that the plan involved an initial order for 1,000 Checker cabs deliverable over a period of about a year at a price for cash of $1900 per cab without tires; and that there was every prospect that the Transportation Company or its sales subsidiary would procure additional substantial orders for Checker cabs; that it was proposed that such sales company should receive a commission of 5% on all orders procured by or through it for Checker cabs, such orders to be either for cash or on credit terms satisfactory to this Company, the price to be as good as Checker gives to any other purchasers for similar quantities and on like terms as to credit and specifications; such arrangement to be for a period of five years.

Mr. Markin stated that he had discussed with a majority of the directors of the Company the advisability of the investment by the Company of $1,000,000 in cash in the convertible preferred stock of the Transportation Com-
2322 pany and, having obtained their approval, had entered into an agreement with Sisto & Co. relative to such purchase. He presented a copy of such agreement to the board for ratification.

Mr. Markin stated that he had been advised by counsel that, because members of the organization of Sisto & Co. would be directors of Parmelee Transportation Company, and possibly of some of the operating companies controlled by that corporation and of subsidiaries of that corporation, and because Sisto & Co., as well as he, himself, would be financially interested in that corporation, certain phases of the proposal and the action of the directors thereon would be subject to ratification by the stockholders. In his opinion, however, the contemplated plan was so essentially for the benefit of this Company that there should be no difficulty in obtaining such ratification.

After discussion, and on motion duly made and seconded, the following resolutions were duly adopted:

"WHEREAS, in the opinion of this Board of Directors the acquisition by Parmelee Transportation Company of a substantial interest in the stocks of Yellow Taxi Corporation, New York, of Chicago Yellow Cab Company, Inc.,

and of the Parmelee Company and the possible future acquisition of interests in other operating companies, will be of substantial benefit to this Company; and

WHEREAS, certain of the stockholders, directors and officers of this Company are prepared to assist in the financing of the Transportation Management Corporation; and

WHEREAS, this Board of Directors deems the in-
2323 vestment by this Company, in $1,000,000 of convertible preferred stock of the Transportation Management Company advisable;

RESOLVED, that the President of this Company be, and he hereby is, authorized to purchase for the sum of $1,000,000 and accrued dividend, $1,000,000 par value of 6% cumulative convertible preferred stock of Parmelee Transportation Company;

FURTHER RESOLVED, that the action of the President of this Company in entering into an agreement with J. A. Sisto & Co. as set forth in the letter addressed to this Company, dated March 26, copy of which has been presented to this meeting, be, and the same hereby is, in all respects approved, ratified and confirmed;

FURTHER RESOLVED, that the President or a Vice-President and the Secretary or Assistant Secretary of this Company be, and they hereby are, authorized to pay the sum of $1,000,000 and accrued dividend against delivery of stock certificates representing preferred stock as aforesaid; and to make, execute and deliver any and all supplemental agreements, receipts or other instruments necessary to carry such purchase fully into effect.

On motion duly made and seconded, the following resolution was duly adopted:

RESOLVED, that in order to put Mr. Morris Markin, the President of this Company, in a position to be of assistance to Parmelee Transportation Company, and any management company affiliated with it, this Company consents that Morris Markin may render services in an advisory capacity to either of said two corporations or any other corporations associated or affiliated with them.

FURTHER RESOLVED, that Paragraph "THIRD" of the agreement between Morris Markin and this Company, dated June 8, 1928, be amended so as to read as follows:

"Since Markin was the founder of the business and has since that time been its General Manager, and since

he is recognized as being a person of unusual and unique ability in the taxicab manufacturing industry, and is thoroughly acquainted not only with the cus-
2324 tomers of the Corporation, but also with its trade methods and secrets, Markin shall devote substantially all of his time and attention to the business of the Corporation and will not directly or indirectly be interested in any company or business competing with the Corporation or its business, during the said period of three years; and that should he during said period voluntarily leave the corporation, or in any other manner violate the terms of his agreement with the Corporation, he will not, during the balance of the term thereof, become directly or indirectly interested, as officer, stockholder, executive, general manager, agent, representative, employee, partner, in an advisory capacity, or otherwise, in any company, concern, or business dealing in any manner in the business of manufacturing, buying, selling or otherwise disposing of taxicabs or other commercial vehicles, or hold himself out as having had any connection with Checker Cab Manufacturing Corporation or any of its subsidiaries; and in the event of any such violation, the Corporation shall be entitled to equitable relief, by injunction or otherwise, in addition to its remedies at law; provided, however, that nothing herein contained shall be deemed or construed to prevent said Markin from becoming interested, as a stockholder or otherwise, in Parmelee Transportation Company (a Delaware corporation) or The Transportation Management Corporation (a Delaware corporation) or any other corporation engaged in the operation or management of taxicabs or other motor vehicles, so long as said Markin shall continue to devote his efforts towards promoting the sales of the products of the Corporation and so long as he shall continue to devote substantially all of his time and attention to the business of the Corporation."

FURTHER RESOLVED, that the modification of the foregoing agreement shall become effective upon receipt by this Company of a letter from Mr. Markin accepting the provisions thereof; and that in all other respects the said agreement dated June 8, 1928, shall continue in full force and effect.

2325 On motion duly made and seconded, the following resolutions were duly adopted:

RESOLVED, that the President or a Vice-President of this Company be and he hereby is authorized to make, execute and deliver an agreement with Parmelee Transportation Company, or such subsidiary sales company as may be organized by it, to pay a commission of 5% on the net sales price to such sales company for all orders or contracts for the purchase of Checker cabs procured by the Parmelee Transportation Company or its sales subsidiary, or through the efforts of either of them, such orders to be for cash or upon such terms as to credit as may be approved by the Executive Committee or Board of Directors of this Company and the price to be generally the price charged by this Company on orders for similar quantities and upon similar terms, or such other price as may be approved by the Executive Committee or Board of Directors of this Company.

FURTHER RESOLVED, that such commission of 5% be paid with respect to cabs which may be delivered under a prospective initial order for 1,000 cabs from Yellow Taxi Company, of Chicago.

Mr. Markin stated that he had recommended to those responsible for the organization of Parmelee Transportation Company that the Firm of Chadbourne, Hunt, Jaeckel & Brown should act as counsel for that company and that he expected such recommendation to be accepted. He stated, however, that Mr. Jaeckel had expressed a wish that if his firm were to act in that capacity, such designation be made subject to the approval of the Board of Directors of this Company.

On motion duly made, seconded and carried, the following resolution was adopted:

2326 RESOLVED, that this Company consent that the firm of Chadbourne, Hunt, Jaeckel & Brown may, if designated, act as counsel for Parmelee Transportation Company and/or any of its subsidiaries or affiliated companies.

No further business coming before the meeting the same was duly adjourned.

.....
President

.....
Secretary

2327 *Gov. Ex. 3*

MINUTES of the Annual Meeting of the stockholders of CHECKER CAB MANUFACTURING CORPORATION, a New Jersey corporation, held at the principal office of the Corporation in the State of New Jersey, Room 309, 15 Exchange Place, Jersey City, New Jersey, on the 17th day of July, 1929, at 10 o'clock A. M., pursuant to notice duly given.

Mr. Markin, President of the Corporation, called the meeting to order and presided thereat. Mr. Haveron, the Secretary of the Corporation, acted as Secretary of the meeting and kept the minutes thereof.

The Secretary then stated that he had caused due notice of this meeting to be given to every stockholder of record at the close of business on July 6, 1929, in accordance with the laws of the State of New Jersey and the By-Laws of this Corporation. He presented to the meeting an affidavit executed by the agent of this Corporation with respect to the mailing of such notices to which was attached the copy of such notice, proxy, and President's letter.

The same were, upon motion duly made and seconded, approved and ordered filed with the records of this meeting.

The Secretary then called the roll and it was found that the following stockholders holding the number of shares of stock set opposite their respective names were present in person:

2328

Names	*Number of Shares*
Morris Markin	22,367
F. L. Haveron	1
Henry Weiss	4,900
John J. Keenan	100

The proxies were then presented to the meeting and examined, and were, thereupon, upon motion duly made and seconded, approved and ordered filed. It was found that the following stockholders, holding the number of shares set opposite their respective names, were present by Abner Goldstone and J. F. Cann as proxies:

Name	*Number of Shares*
E. Lowitz & Co.	2,495

It was also found that the following stockholders, holding the number of shares set opposite their respective names, were present by Morris Markin and F. L. Haveron (Graham Adams being absent) as proxies:

2329 Name	Number of Shares
Abraham, Joseph H.	200
Adams, Graham	1
Armstrong, Louise Miss	10
Anderson, Henry	20
Bacon, Curtiss S.	25
Bair, Lena Miss	10
Barnett, Gladys Miss	15
Baum, Leland M.	10
Bava, Elizabeth T.	10
Becker, Julius	2,702
Bennett, Fred S.	30
Black, John	75
Blickman, Saul	100
Block, Maloney & Co.	2,731
Blum, Joseph M.	100
Boyles, Emmett	100
Brown, Harry H.	10
Brown, Jeanette	5
Bruff, Austin J.	100
Campbell, Starring & Co.	100
Chesterton, A. Revereaux	35
Chesterton, Lucretia M. Mrs.	20
Colgate, Jas. B. & Co.	350
Conte, Edward	15
Cornell, Oliver S.	30
Coyle, Sarah	20
Dammann, Milton	400
Davis, Ethyl J. Miss	10
DeNiord, Hollis H.	100
Diall, Oliver M.	100
Dominick & Dominick	1,200
Donovan, Voelker & Co.	20
Dorney, Irene M. Mrs.	200
Dutton, Alice Miss	10
Eastman, Dillon & Co.	355
Ebbels, Grace A. Mrs.	10
Evans, Mae G. Mrs.	10
Fant, Hamilton G.	500
Feder, Max.	13
Feiner, May A	300
Fenwick, Harold L.	5
Flaherty, Mary F. Miss	10
Flynn, Marietta I.	15
Friday, William H.	50

2330 Name	Number of Shares
Gerety, William J.	175
Gillespie, Eugene F.	600
Goldby, Cecil L.	25
Goldenberg, Max	50
Hallgarten & Co.	13,300
Halsey, C. D. & Co.	400
Halsted & Harrison	350
Harriman & Co.	250
Haveron, Minnie H.	15
Hayman & Hayman	50
Heidelbach, Ickelheimer & Co.	1,750
Henderson, Ralph	3,750
Herbst, Frank & Co.	100
Herbst, Frank	17,349
Hill, Marie B. Miss	10
Hollander, Sidney	200
Jackson & Curtis	100
Jacobs, Annie R. Mrs.	10
Jelleme, Howard S.	20
Johnson, Donna M. Mrs.	75
Jones, Harvey L. (Vice President)	50
Jozouski, Stanley M.	4
Kaffenburgh, Albert W.	500
Kahn, Albert	400
Kahn, Edgar D.	100
Kahn, Louis	100
Kahn, Olive Julian	5
Katz, Leah Miss	45
Kenner, William	15
Kettenburg, Walter	20
Kleutgen, Arthur C.	100
Klipfel, Charles	2,015
Kochenthal, Jesse	100
Laird, Bissell & Meeds	350
L'Amoreaux, Paul C.	437
Lansburg Bros.	350
LaSalle Discount Corporation	13,000
Lee & Co.	731
Lesch, John	150
Lester, Justin W.	50
Levi, Albert L.	10
Littlehales, Cecil	2
Locatell, Charles A.	25

2331

Name	Number of Shares
McCabe, Bernard J.	100
McClure, Jones & Co.	25
McCrea, Daniel W.	200
McWilliams, Anne C. Miss	10
Marks, Abraham	30
May, Albert J.	50
Meibohm, Carl H.	200
Middendorf, Theodore M.	25
Middlesworth, George W.	25
Murphy, William J.	2
Natoli, Evangeline C. Miss	3
Newburger, Henderson & Loeb	5,250
Nichols, Clara H. M. Mrs.	15
Nichols, Clarinda F.	5
Nichols, Clarinda Mrs.	38
Nichols, Dorothy E.	25
Nichols, Fred M.	10
Nichols, Frederick H.	600
Nichols, George H.	48
Nichols, Helen J.	5
Oakland, Ralph E.	1,335
Orgia, Domenico B.	100
Outwater & Wells	200
Owens, James J.	15
Parsons, Fayette	600
Penny, David H. G.	100
Perkins, Charles H.	200
Peterson, Susan M. Miss	20
Petronio, Romeo F.	100
Pickering, L. D. & Co.	350
Pierce, Edward B.	325
Pohlke, Otto H.	25
Polansky, Jack	2,420
Pope, Clara H. Mrs.	10
Post, Robert C.	150
Rattner, Samuel H.	50
Reid, Julia M. Miss	10
Richards, J. Permar	700
Robb, Robert G.	10
Robinson, Fred'k G.	500
Robinson, Henry R.	50
Rosenberg, Sophie	600
Rothenberger, Moritz	101

2332	Name	Number of Shares
	Sanford, Loretta	18
	Savage, Frank	1,000
	Schaap, Frank	60
	Schaefer, Mildred Feltman Mrs.	100
	Schweitzer, Henry A.	450
	Scott, E. Harrison	100
	Shea, Elizabeth H. Miss	5
	Shearson, Hammill & Co.	300
	Simonds, Mercedes C. Miss	63
	Sisto, J. A. & Co.	77,708
	Soderlund, Oscar	700
	Sparks, J. R. & Co.	75
	Spears, Harry E.	100
	Spellman, Elizabeth Mrs.	30
	Starr, Harry G.	300
	Stauffer, Charles A.	100
	Stewart, Margaret Mrs.	40
	Strassen, Harold S.	20
	Strode, Alda L.	325
	Strupp & Co.	405
	Stubbs, Gertrude G.	100
	Sullivan, Jerome B. & Co.	3,305
	Tassimi, Adoph	20
	Vidal, Eloise Miss	3
	Walker, Annie T. D. Mrs.	50
	Ward, Chas. T.	200
	Weinland, Harold	600
	Weisburg, Harry	900
	White, Edith C. Miss	3
	White, Weld & Co.	600
	Whiting, Charles S.	10
	Wiener, Henry, Jr.	200
	Williams, Charles A.	2,000
	Willson, Ernest R.	20
	Woodruff, David H.	20
	Woodruff, E. Orton	150
	Yingling, Thomas S.	20
	Young, Irene Miss	11
	Zimmerman, Kate L. Miss	55
	Ardis, Smith & Warwick	400
	Cusick, P. F. & Co.	1,350
	Hall, Stanley	650
	Blum, Joseph M.	100

2333 The Secretary then stated that stockholders holding 204,558 shares without nominal or par value of the capital stock of this Corporation out of 375,000 shares issued and outstanding, were present in person or represented by proxy, said shares being shares which had not been transferred on the books of the Corporation during the twenty days prior to this meeting, and that a quorum was, therefore, present at this meeting.

The Secretary then stated that a full list of the stockholders entitled to vote for the election of directors arranged in alphabetical order, with the residence of each and the number of shares held by each, had been prepared and filed in the registered office of the Corporation at least ten days before this election and had been at all times, during the usual hours for business, open to examination by any stockholder. Such list was presented to the meeting and, upon motion duly made and seconded, approved and ordered filed, upon the adjournment of this meeting.

The Chairman then presented the annual report to the meeting.

After due discussion of the annual report, the following resolution was, upon motion duly made and seconded, adopted by the vote in person or by proxy of all the stockholders present at this meeting:

> Resolved that the annual report submitted to this meeting be, and the same hereby is, in all respects approved, and that the same be affixed to and made a part of the records of this meeting.

2334 The general affairs of the Corporation were then discussed, the Chairman reporting that the earnings for the first six months for the year 1929 were $2,720,666.68.

The Chairman then stated that one of the purposes of this annual meeting was to elect four directors to fill the vacancies caused by the expiration of the terms of the directors whose terms expire in the year 1929, the same being Jacques Moos, Jack Polansky, Mayer L. Halff and Eugene F. Gillespie. He further stated that the directors to be elected at this meeting were, in accordance with the provisions of the Certificate of Incorporation of the Corporation, as amended, to hold office as directors for three years,—to wit: until the annual meeting of stockholders in the year 1932, and until their successors are chosen and qualify. The following gentlemen were thereupon nominated directors of this Corporation for the term of three

years, such term to expire at the annual meeting of stockholders in the year 1932:

Jack Polanksy
E. T. Gillespie
Jacques Moos
Albert F. Jaeckel

There were no further nominations for directors.

Mr. Markin, the presiding officer of the meeting, then appointed Charles G. Fuller and Mr. Hinkley Mitchell Inspectors for the purpose of conducting the vote by ballot of the directors to be elected at this meeting.
2335 Neither Inspector was a candidate for the office of director. It was then ordered that the Inspectors be sworn to the faithful performance of their duties and be instructed to certify in writing to the returns. The oath of the Inspectors was ordered affixed to and made a part of the records of this meeting.

A vote of the stockholders present in person or represented by proxy for the election of the directors nominated at this meeting was then conducted by ballot, it having been pointed out to the stockholders that at all elections of directors each stockholder entitled to vote was entitled to as many votes as shall equal the number of his shares of stock multiplied by the number of directors to be elected, and that he could cast all said votes for a single director or could distribute them among the number to be voted for, or any two or more of them as he saw fit. After the ballot had been taken the vote was canvassed by the Inspectors and the proxies were likewise delivered to the Inspectors to evidence the authority of the proxies to cast ballots for the election of directors, and when the vote was counted and ascertained the Inspectors certified that the persons nominated as directors had been elected directors of this Corporation to serve until the annual meeting of the stockholders in the year 1932 and until their successors are chosen and qualify. The certificate of such Inspec-
2336 tors was then approved and was affixed to and made a part of the records of this meeting.

The Chairman then announced that Messrs. Jack Polansky, Jacques Moos, Eugene F. Gillespie and Albert F. Jaeckel had been elected directors of this Corporation, to serve until the annual meeting of the stockholders in the year 1932, and until their successors are chosen and qualify.

The Chairman then presented to the meeting the minutes of the meetings of the Board of Directors and Executive

Committee since the last meeting of the stockholders and the minutes of the last meeting of the stockholders, said minutes being of the following meetings:

Meeting of Stockholders—October 22, 1928 (including the minutes of the Board of Directors mentioned therein);

Meetings of Board of Directors—October 24, November 14, November 15, December 12 and December 20, 1928; January 25, March 27, April 8, April 30, May 27 and July 2, 1929;

Meetings of Executive Committee—January 3, May 22, June 5 and July 11, 1929.

The Chairman pointed out to the stockholders present at the meeting that this Corporation had purchased
2337 $1,000,000 par value of 6½% Convertible Preferred stock of Parmelee Transportation Company, a Delaware corporation which had been organized for the purpose of holding the stocks of, and managing through a subsidiary, companies operating taxicabs; such Preferred Stock being all the issued and outstanding Preferred Stock of said company. He further stated that he deemed this purchase to be extremely advantageous in supplying a connection for marketing the products of this Corporation, and that the Board of Directors had approved this purchase. He further stated that with the knowledge and consent of the Board of Directors he individually had purchased a large block of the Common Stock of Parmelee Transportation Company and had likewise entered into a contract to render services to its managing subsidiary, The Transportation Management Corporation. He further stated that he had an option to purchase a large block of additional Common Stock of Parmelee Transportation Company and had acted as a syndicate participant in the offering of the Convertible Cold Debentures and Common Stock of said Company. He also called the attention of the stockholders to the fact that Mr. F. L. Haveron was a director and the Secretary and Treasurer of Parmelee Transportation Company, and that Mr. Graham Adams, a director of this Corporation, was also a director of Parmelee Transportation Company, that Mr. Adams was also a partner in Messrs. J. A. Sisto & Co., and that Mr. Haveron and Mr. Ludington were associated with that firm,
2338 which managed and participated in the syndicate which had offered the securities of Parmelee Transportation Company and which, in November, 1928, had underwritten an offering by this Corporation of shares of stock to its stockholders.

After considering the minutes of the Board of Directors and Executive Committees since the last annual meeting of the stockholders and of the minutes of the last meeting of the stockholders presented to this meeting, and of the minutes of the Directors and Executive Committee therein referred to, the following resolution was; upon motion duly made and seconded, adopted by the unanimous vote of all stockholders present in person or represented by proxy:

RESOLVED that all minutes of the meetings of the directors and of the Executive Committee since the last meeting of the stockholders and the minutes of the last meeting of the stockholders presented to this meeting be and the same hereby are in all respects approved; and that all action taken by the Board of Directors and the Executive Committee and the officers of the Corporation pursuant to such minutes, including among other things the recent investment by this Corporation of substantial sums in Parmelee Transportation Company and the participation of the officers of this Corporation in the financing the operations of Parmelee Transportation Company and its subsidiaries, and the modification of the Markin employment contract and the underwriting by Messrs. J. A. Sisto & Co. of the offering of stock to stockholders, be, and the same are, ratified, approved and confirmed.

There being no further business to come before the meeting, the same was duly adjourned.

.....

Secretary.

2339 *Gov. Exhibit 4*

The first meeting of the Board of Directors of PARMELEE TRANSPORTATION COMPANY, a Delaware corporation, was held at the office of J. A. Sisto & Co., No. 68 Wall Street, New York City, on the 16th day of April, 1929, at 10 o'clock in the forenoon, pursuant to consent and waiver of notice thereof signed by all of the directors of the Company.

The following directors were present:

Messrs. Ernest H. Miller
Graham Adams
Wm. R. Derby
F. L. Haveron
Morrell W. Gaines

being all of the members of the Board of Directors of the Company.

The meeting was organized by electing Mr. Ernest H. Miller as Chairman of the Meeting and Mr. F. L. Haveron as Secretary of the Meeting.

Mr. F. L. Haveron was thereupon sworn to the faithful discharge of his duties as Secretary of the Meeting and, on motion, duly made and seconded, the following resolution was unanimously adopted:

RESOLVED that the oath of the Secretary of this Meeting be incorporated in the minutes of this meeting.

Such oath is as follows:

2340 PARMELEE TRANSPORTATION COMPANY

Oath of Secretary of the First Meeting of the Board of Directors of the Company

State of New York, }
County of New York. } ss.:

I, F. L. HAVERON, being duly sworn, DO HEREBY PROMISE AND SWEAR, that I will faithfully, honestly and impartially discharge the duties of Secretary of the First Meeting of the Board of Directors of Parmelee Transportation Company, a Delaware corporation, to be held at the office of Messrs. J. A. Sisto & Co., No. 68 Wall Street, New York City, on April 16, 1929, at 10 o'clock in the forenoon.

F. L. HAVERON

Subscribed and sworn to before me
this 16th day of April, 1929.
W. H. Gambrell,
Notary Public, New York County
N. Y. Co. Clerk's No. 376, Reg. No. C-436
Kings Co. Clerk's No. 292, Reg. No. 395
Bronx Co. Clerk's No. 49, Reg. No. 3061A
Certificate also filed in Nassau & Suffolk Counties.
Commission expires March 30, 1930

2341 The Chairman presented to the meeting a consent to the holding of the meeting and waiver of notice thereof signed by all of the directors of the Company.

Thereupon, on motion, duly made and seconded, the following resolution was unanimously adopted:

RESOLVED that the consent to the holding of this meeting and waiver of notice thereof be incorporated in the minutes of this meeting.

Such consent and waiver is as follows:

2342 PARMELEE TRANSPORTATION COMPANY

Consent and Waiver of Notice of the First Meeting of the Board of Directors

We, the undersigned, being all of the directors of Parmelee Transportation Company, a Delaware corporation, Do HEREBY WAIVE notice of the time and place and purposes of the First Meeting of the Board of Directors of said Company and of the business to be transacted at such meeting, and Do HEREBY FIX April 16, 1929, at 10 o'clock in the forenoon as the time and the office of Messrs. J. A. Sisto & Co., No. 68 Wall Street, New York City, as the place of said meeting.

Dated, April 16, 1929.

ERNEST H. MILLER
GRAHAM ADAMS
F. L. HAVERON
MORRELL W. GAINES
WM. R. DERBY

2343 The minutes of the First Meeting of the Company and of its incorporators and subscribers to its capital stock held on April 13, 1929, were read and in all respects approved.

The Chairman then presented to the meeting a copy of the by-laws for the regulation of the business affairs of the Company which had been adopted by the incorporators and subscribers to the capital stock of the Company at said meeting.

Thereupon, on motion, duly made and seconded, the following resolution was unanimously adopted:

RESOLVED that the by-laws, a copy of which has been presented to this meeting, are hereby approved and adopted as the by-laws of this Company.

The meeting then proceeded to the election of officers, to-wit: A Chairman of the Board and President, a Vice-President, a Secretary, a Treasurer, an Assistant Secretary and an Assistant Treasurer, each to hold office as provided in the by-laws.

At this point Mr. Wm. R. Derby tendered to the Chairman of the meeting his resignation as a Director of the Company effective immediately.

Thereupon, on motion duly made and seconded, the following resolution was unanimously adopted:

RESOLVED, That the resignation of Mr. Wm. R.
2344 Derby as a Director of this Company, which has been submitted to this meeting, be and it hereby is accepted

effective immediately, and that the original of such resignation be appended to the end of the minutes of this meeting.

The Chairman then stated that it was desirable to elect a Director to fill the vacancy created by the resignation of Mr. Derby. Nominations having been called for Mr. Austin J. Bruff was nominated to fill such vacancy.

There being no further nominations, upon motion duly made and seconded the following resolution was unanimously adopted:

RESOLVED, That Mr. Austin J. Bruff be and he hereby is elected a Director of this Company to fill the vacancy created by the resignation of Mr. Wm. R. Derby and to hold office until the next annual election of Directors and until his successor shall have been elected and duly qualified.

Mr. Bruff, being present, thereupon took his seat in the meeting.

Nominations having been duly made, the following persons were unanimously elected to the offices in the Company stated opposite their respective names:

NAMES	OFFICES
Ernest H. Miller	Chairman of the Board and President
Morrell W. Gaines	Vice-President
F. L. Haveron	Secretary
F. L. Haveron	Treasurer
A. G. Steckler	Assistant Secretary
A. G. Steckler	Assistant Treasurer

2345 Mr. F. L. Haveron, being present, was thereupon sworn in to the faithful discharge of his duties as Secretary of the Company and, on motion, duly made and seconded, the following resolution was unanimously adopted:

RESOLVED that the oath of the Secretary of this Company be incorporated in the minutes of this meeting. Such oath is as follows:

2346 PARMELEE TRANSPORTATION COMPANY

Oath of Secretary of the Company

State of New York, }
County of New York. } ss.:

I, F. L. HAVERON, being duly sworn, DO PROMISE AND SWEAR, that I will faithfully, honestly and impartially dis-

charge and perform the duties of Secretary of Parmelee Transportation Company, a Delaware corporation, according to the best of my skill and ability.

F. L. Haveron

Subscribed and sworn to before me
this 16th day of April, 1929.
W. H. Gambrell

2347 Mr. Ernest H. Miller, having been elected Chairman of the Board and President, continued to preside and Mr. F. L. Haveron, having been elected Secretary of the Company, continued to act as Secretary of the Meeting. The Secretary then submitted to the meeting an impression of the proposed seal of the Company in the following form:

Thereupon, on motion, duly made and seconded, the following resolution was unanimously adopted:

Resolved that the form of seal submitted to this meeting and bearing the words and figures "Parmelee Transportation Company, Corporate Seal 1929 Delaware" is hereby approved and adopted as the corporate seal of this Company.

The Chairman submitted to the meeting a form of Certificate of Authorization of Corporation Trust Company of America as Resident Agent of the Company in Delaware.

Thereupon, on motion, duly made and seconded, the following resolutions were unanimously adopted:

Resolved that in compliance with the laws of the State of Delaware this Company shall continuously maintain a principal office within said State and have a Resident Agent at all times in charge thereof upon whom process against the Company may be served
2348 and therein keep the stock and transfer books of this Company or duplicate copies thereof, and that said principal office be located at the office of Corporation Trust Company of America, a corporation organized under the laws of the State of Delaware, in the City of Wilmington, in said State, which office is now at No. 7 West Tenth Street in said City;

Resolved that Corporation Trust Company of America be, and it hereby is, appointed Agent of this Company in charge of the principal office of this Company, in the City of Wilmington, and of the books required by law to be kept in said office and the Agent upon whom process against this Company may be served, in accordance with the laws of said State;

RESOLVED that said Corporation Trust Company of America may apply to and act upon instructions of such counsel for this Company as may from time to time be designated by the Board of Directors of this Company in respect of any question arising in connection with its duty as such Agent of this Company;

RESOLVED that the Secretary of this Company be, and he hereby is, authorized to sign and seal with the seal of this Company a Certificate of Authorization to said Corporation Trust Company of America in substantially the form of the certificate submitted to this meeting;

RESOLVED that the Secretary of this Company be, and he hereby is, authorized to procure all necessary corporate books, to open stock and transfer books in accordance with the by-laws of this Company and the statutes of the State of Delaware and to send such stock or transfer books, or duplicates thereof, to the principal office of this Company in said State to be kept as required by law.

The Chairman then stated that the Treasurer of the Company should be given authority to pay and to
2349 reimburse any persons who had paid over disbursements and expenses in connection with the organization of the Company of whatever kind or nature.

Thereupon, on motion, duly made and seconded, the following resolution was unanimously adopted:

RESOLVED that the Treasurer of this Company be, and he hereby is, authorized to pay and to reimburse any person or corporation who has made any disbursements therefor, all charges and expenses, including counsel fees, incidental to or arising out of the organization of this Company.

After full consideration, on motion, duly made and seconded, the following resolution was unanimously adopted:

RESOLVED that the officers of this Company be, and they hereby are, authorized and directed on behalf of this Company and under its corporate seal, or otherwise, to make and file such certificates, reports, statements, powers of attorney or other instruments and to appoint such agents or attorneys in connection therewith as may be required by law to be filed in any state or territory of the United States or in any foreign country in which the President shall deem it necessary or proper to file the same in order to authorize the

Company to transact business in such state, territory or foreign country, or for any other purpose in the President's discretion.

The Chairman then stated that it was desirable for the Board of Directors to direct that the Treasurer furnish a bond for the faithful performance of his duties as Treasurer of the Company.

2350 Thereupon, on motion, duly made and seconded, the following resolution was unanimously adopted:

RESOLVED that the Treasurer be, and he hereby is, directed to furnish bond in such amount and with such sureties and in such form as the President shall direct and approve.

The Secretary then submitted to the meeting proposed forms of certificates for the 6% Cumulative Convertible Preferred Stock of the par value of $100 per share and of the Common Stock without par value of the Company in the following forms:

2351 On motion, duly made and seconded, the following resolutions were unanimously adopted:

RESOLVED that the forms of certificates for the 6% Cumulative Preferred Stock and the Common Stock of this Company which have been submitted to this meeting be, and they hereby are, in all respects approved and that they be adopted as the forms of certificates to be used by this Company for shares of stock of said classes, respectively;

RESOLVED that until otherwise ordered by the Board of Directors of this Company all the certificates which shall be issued by this Company representing any of its capital stock shall be signed in its name and on its behalf by, or shall bear the facsimile signatures of, its President or a Vice-President and its Secretary or an Assistant Secretary or Treasurer or an Assistant Treasurer, and have affixed thereto its corporate seal or a facsimile thereof;

RESOLVED that the proper officers of this Company be, and they hereby are, empowered to execute any and all instruments and take and perform any and all action which they shall deem proper or advisable to effect the intent and purposes of the foregoing resolutions.

The Chairman then presented to the meeting an offer, in the form of a letter addressed to this Company under date of April 17, 1929, of J. A. Sisto & Co., to transfer to this

Company certain contracts therein described for the purchase of stock of Chicago Yellow Cab Company, Inc., the Parmelee Company and Yellow Taxi Corporation, New York, (said contracts being hereinafter collectively called the purchase contracts), a copy of which letter is as follows:

2352 April 17, 1929.

Parmelee Transportation Company,
7 West 10th Street,
Wilmington, Delaware.

Dear Sirs:

We have entered into the following contracts, all dated March 2nd, 1929, copies of which together with their exhibits are enclosed herewith:

(a) With Mr. Charles A. McCulloch for the purchase of (1) not less than 100,000 and not more than 120,000 shares of the stock of Chicago Yellow Cab Company, Inc., at the price of $35 per share, and (2) not less than 15,000 and not more than 20,000 shares of the stock of The Parmelee Company at the price of $100 per share.

(b) With Mr. Ernest H. Miller for the purchase of not less than 42,000 and not more than 49,000 shares of the stock of Yellow Taxi Corporation, New York, at the price of $32.50 per share.

(c) With Mr. Charles A. McCulloch for the purchase of not less than 30,000 and not more than 56,000 shares of the stock of Yellow Taxi Corporation, New York, at the price of $35 per share.

Pursuant to the terms of said contracts between Mr. Charles A. McCulloch and ourselves, Mr. McCulloch has notified us that he will deliver to us and has thereby become obligated to deliver to us upon the terms of said contracts the following shares of stock:

Name of Company	*No. of Shares*
Chicago Yellow Cab Company, Inc.	106,819
The Parmelee Company	19,300
Yellow Taxi Corporation, New York,	38,000

2353 Pursuant to the terms of said contract between Mr. Ernest H. Miller and ourselves, Mr. Miller has notified us that he will deliver to us and has thereby become obligated to deliver to us on the terms of said contract 47,659 shares of the stock of Yellow Taxi Corporation, New York.

Certified audits and financial statements, together with other statements regarding the condition of the three companies whose stocks we have agreed to purchase or find purchasers for pursuant to the above contracts are annexed to the copies of said contracts enclosed herewith.

We hereby offer to transfer to you at and for the sum of $1 all of our rights and obligations under said three contracts, you agreeing

(a) to assume all of our obligations under said contracts and to accept and pay for the shares of stock which the sellers thereunder are obligated to deliver to us thereunder as above indicated, all upon the terms and conditions of said contracts;

(b) to indemnify us against any liabilities or claims on the part of the sellers under said contracts or any of them; and

(c) to pay any charges or expenses which we may certify to you that we have incurred for fees of experts and counsel or otherwise in connection with the business.

2354 We also enclose herewith a proposed draft of temporary Debenture to be dated April 1, 1929, to mature April 1, 1944, and to be issued by you under a Trust Indenture between you and Guaranty Trust Company of New York, as Trustee, dated April 1, 1929, and if you accept our offer herein contained it is understood that the Debentures which you agree to sell to us shall be in substantially the form of the enclosed draft of temporary Debenture. The form and terms of the Trust Indenture securing the Debentures shall be satisfactory to us.

In the event of your accepting our offer herein expressed and carrying out said purchase of the number of shares of stock of Chicago Yellow Cab Company, Inc., The Parmelee Company, and Yellow Taxi Corporation, New York, indicated above, we agree to purchase or cause to be purchased from you and you agree to sell to us or to purchasers found by us $5,000,000, principal amount, of your 6% Sinking Fund Convertible Debentures (in substantially the form of the temporary Debenture enclosed herewith) 10,000 shares of your 6% Cumulative Convertible Preferred Stock of the par value of $100 per share and 250,000 shares of your Common Stock without par value, all for the sum of $10,000,000 plus accrued interest on said Debentures and accrued dividends on said Preferred Stock to the date of delivery thereof. All of said shares are to be issued as

fully paid and nonassessable. Said purchase shall
2355 include the 50 shares of your Common Stock subscribed for by the subscribers to your Certificate of Incorporation and payment therefor shall be taken as payment of the amount due on said subscription so that at the conclusion of said purchase your total stock, outstanding or subscribed for, shall be 10,000 shares of Preferred Stock and 250,000 shares of Common Stock.

We also enclose herewith a proposed draft of option agreement between yourselves and ourselves providing for the granting of options to us to purchase 100,000 shares of Common Stock of your Company and it is understood that if you accept our offer herein contained you will, on or before the delivery date for your said securities, execute and deliver to us an agreement in substantially said form.

Said contracts with Messrs. McCulloch and Miller call for the delivery of stock thereunder against payment, not later than April 29, 1929; and for your Debentures, Preferred Stock and Common Stock, purchased or caused to be purchased by us hereunder, payment is to be made to you at the same time that you make payment under said contracts with Messrs. McCulloch and Miller, against the delivery by you to such person or persons as we may direct of said Debentures, the certificates for said Preferred Stock and Common Stock (such certificates being registered in such name or names and being in such de-
2356 nominations as we shall request in writing) and a duly executed copy of said option agreement. You are to give us one day's written notice of the time and place where payment and delivery for the Debentures, Preferred Stock and Common Stock purchased by us hereunder is to be made.

In addition to conforming to the specifications above set forth, the terms of said Debentures, said Preferred Stock and said Common Stock shall conform to the descriptions thereof contained in the enclosed draft of prospectus letter (and the balance sheet printed on the back thereof) describing said securities, which letter, signed by your President, we shall be authorized by you to use in connection with the sale of said securities.

In the event you accept our offer herein expressed, you will use your best efforts to qualify the Debentures, Preferred Stock and Common Stock which we shall purchase or cause to be purchased from you hereunder, for sale to the public at retail under the Blue Sky laws of such states

of the United States of America as we shall designate and you will make application and use your best efforts to list said securities, or any thereof requested by us, upon any stock exchange or exchanges designated by us.

We are not to be under any liability to you in case either Mr. McCulloch or Mr. Miller shall fail to carry
2357 out his obligation in whole or in part to deliver stock under the contracts above described, nor do we make any representations or warranties concerning the validity or fully paid character of said stock or any thereof, or concerning the condition, financial or otherwise, of the Companies by which such stock was issued, or any of them.

In the event you accept our offer herein expressed, our obligation to carry out this contract with you shall be subject to the approval of our counsel as to all legal proceedings taken to authorize the issue and delivery by you in accordance with the terms hereof, of said Debentures, Preferred Stock and Common Stock, and the execution and delivery by you of said Option Agreement and all other matters in the premises.

Upon receipt by us of your written acceptance of the offer herein contained, this letter shall be deemed to constitute for all purposes an assignment to you of said contracts between Mr. McCulloch and ourselves and said contract between Mr. Miller and ourselves on the terms and subject to the conditions herein expressed.

Very truly yours,

J. A. Sisto & Co.
by (Signed) J. A. Sisto
A Partner

Accepted:
Parmelee Transportation Company
by
President
April , 1929.

2358 Agreement dated the 17th day of April 1929, between Parmelee Transportation Company, a Delaware corporation, party of the first part (hereinafter called the Company), and J. A. Sisto & Co., a copartnership of The City of New York, party of the second part (hereinafter called the Bankers).

By agreement, dated April 17, 1929, between the Bankers and the Company, the Company agreed, among other things that it would give or grant to the Bankers an option or options, to purchase 100,000 shares of common stock without

par value of the Company (hereinafter called common stock, upon the terms of this agreement.

NOW, THEREFORE, in consideration of the premises and in order to carry out the obligation of the Company abovementioned, the parties have agreed and hereby do agree as follows:

FIRST: The Company hereby gives and grants to the Bankers an irrevocable option to purchase at any time, or from time to time, on or before April 1, 1934, all or any part of 100,000 shares of common stock of the Company at the price of Thirty dollars ($30) per share, which price shall be subject to adjustment as hereinafter stated.

When at any time the Bankers shall elect to exercise their option hereunder, in whole or in part, the Bankers shall give written notice to the Company of such election, stating therein the number of shares to be purchased and the date on and after which delivery is desired. Delivery of and payment for such number of shares shall thereupon be made on the designated date, or such later date as the parties hereto shall agree upon, at the office of the Bankers, at 68 Wall Street, New York City, or at such other place as the Bankers shall designate. Deliv-
2359 eries of shares in respect of which the option is exercised shall, if the common stock of the Company is listed on any stock exchange or exchanges, at the option of the Bankers, be subject to the listing of such shares on any such exchange or exchanges and the Company agrees to use its best efforts to list such shares, promptly, on any such exchange or exchanges.

SECOND: The option given or granted as in Article First hereof provided shall be subject to the following further terms and conditions:

(*a*) The option purchase price for common stock shall be thirty dollars ($30) per share; provided, however, that in case common stock in addition to the two hundred fifty thousand (250,000) shares presently to be issued and outstanding shall be issued at a price or prices which shall net the Company less than thirty dollars ($30) per share or as a stock dividend as hereinafter defined, then the option purchase price for such common stock shall, subject to the provisions hereinafter set forth, be determined in the following manner: The aggregate value of said two hundred fifty thousand (250,000) shares at the price of thirty dollars ($30) per share, plus the aggregate amount of money, if any, for which such additional common stock shall

have been issued or sold, shall be divided by two hundred fifty thousand (250,000) increased by the number of such additional shares of common stock issued or sold and the quotient resulting from such division shall be the price per share at which common stock shall thereafter be issued on exercise of the option herein granted; provided that for the purposes of this sub-paragraph (*a*) shares of common stock issued as a stock dividend shall be treated as additional shares
2360 but shall not be deemed to have been issued for money or cash value; and provided further, that the excess number of shares of common stock at any time issued in exchange for shares of common stock theretofore issued over the number of shares thereof surrendered on any such exchange, shall be deemed to have been issued as a stock dividend, and if at any time the Company shall declare a cash dividend on any of its common stock and shall contemporaneously or substantially contemporaneously therewith give to the holders thereof the right to subscribe for additional common stock at a price which shall net the Company in the aggregate substantially the amount of such cash dividend so declared, such common stock so issued in respect of any such subscription shall be deemed to have been issued as a stock dividend; and provided further, also, that the option purchase price shall never exceed thirty dollars ($30) per share and, having at any time been reduced as in this sub-paragraph (*a*) provided, shall never thereafter be increased above such reduced option purchase price, notwithstanding the subsequent issue of additional shares at a valuation or price exceeding such reduced option purchase price. The option purchase price shall not, however, be affected by the issue of common stock in pursuance of the conversion privilege conferred by the Company upon its 10,000 shares of 6% Cumulative Convertible Preferred Stock presently to be issued, or in pursuance of the conversion privilege which the Company intends to confer upon the $5,000,000, principal amount, of its debentures which are to be presently issued, or by the issue of common stock for labor done, personal property, real property or leases thereof.

2361 (*b*) If common stock of the Company in addition to said two hundred fifty thousand (250,000) shares shall be issued (other than in pursuance of the conversion privileges specified in sub-paragraph (*a*) of this

Article Second or for labor done, personal property, real property or leases thereof) at a price or prices which shall net the Company less than thirty dollars ($30) per share or as a stock dividend (as above defined), a statement signed by its president or vice-president and by its secretary or treasurer, approved by some competent certified public or chartered accountant or accountants, shall be filed forthwith by the Corporation with its stock transfer agents, and each of them, showing the number of shares of common stock issued or sold in addition to said two hundred fifty thousand (250,000) shares, the price at which such issues or sales were made, and the option purchase price at which by reason thereof the common stock then remaining under option hereunder shall thereafter be issued upon the exercise of such option.

(*c*) If at any time prior to the expiration or complete exercise of the option, the Company shall be consolidated with, or merged into, any other corporation or shall sell all, or substantially all, of its property and business as an entirety to another corporation or corporations, lawful provision shall be made as part of the terms of such consolidation, merger or sale that the Bankers shall thereafter be entitled to purchase in lieu of each share of stock remaining under option but at the option price in effect at the time of such consolidation, merger or sale, the same kind and amount of securities or assets as may be issuable, distributable or payable upon such consolidation, merger or sale with respect to each share of stock called for by the
2362 option. Lawful provision having been so made, from and after such consolidation, merger or sale, all rights of the Bankers shall cease and determine, except the right to purchase during the life of the option such securities or assets, as in this paragraph (*c*) provided.

THIRD: The Company agrees at all times to reserve unissued a number of shares of its authorized common stock sufficient to satisfy the option rights conferred upon the Bankers by this agreement and to keep the transfer agent for said shares supplied with sufficient stock certificates to provide for all deliveries of stock that may be required hereunder.

FOURTH: All notices under this agreement shall be put in writing and shall be sufficient in all respects if delivered in person or sent by registered mail to the party who is to receive the same, at No. 48 Wall Street, New York City,

in the case of the Bankers, and at the office of Guaranty Trust Company of New York, Transfer Agent for the common stock, No. 140 Broadway, New York, N. Y., in the case of the Company.

FIFTH: This agreement shall inure to the benefit of, and be binding upon the parties hereto, their successors, legal representatives and assigns, and the Bankers may assign or transfer to any third party or parties individual or corporate, any or all of their rights hereunder and any such assignee may similarly reassign the rights so assigned if authorized to do so by the Bankers.

SIXTH: Whenever at any time or from time to time the Bankers shall so request, the Company will deliver to or upon the order of the Bankers, warrants in bearer or registered form and in such other form and in such denominations as the Bankers shall request, issued under an
2363 agreement with a Trustee or Warrant Agent designated by the Bankers, which agreement shall contain such usual protective features as the Bankers shall request, for the purchase of shares of common stock not exceeding in the aggregate the number of shares then remaining under option hereunder for the period and at the price and subject generally to the terms and condition herein set forth, subject to the additional condition, however, that the Company shall agree in such agreement, and hereby agrees, that upon the issue of any such warrants the Company shall list an additional number of shares of its common stock on all stock exchanges on which common stock of the Company shall then be listed, on official notice of issuance thereof, equal to the number of shares of common stock called for by such warrants.

IN WITNESS WHEREOF, the parties hereto have executed this agreement, in duplicate, the day and year first above written.

PARMELEE TRANSPORTATION COMPANY,
by

President.

J. A. SISTO & Co.,
by

A Partner.

2364 The Chairman then directed the attention of the directors to the certified audits and financial statements annexed to the copies of the purchase contracts. The Chairman thereupon presented to the meeting certificates of the registrars of the capital stocks of said three

Companies indicating the number of shares of stock of said Companies issued and outstanding.

After full discussion, on motion, duly made and seconded, the following preambles and resolutions were adopted (by the votes of all of the directors of the Company, except Mr. Adams who did not vote on this matter):

WHEREAS this Company has been organized under the laws of the State of Delaware for the purpose, among other things, of acquiring stocks of other corporations engaged in the transportation business and Chicago Yellow Cab Company, Inc., the Parmelee Company and Yellow Taxi Corporation, New York, are corporations engaged in the transportation business; and

WHEREAS J. A. Sisto & Co. have, by a letter addressed to this Company under date of April 17, 1929, and submitted to this meeting, offered to transfer to this Company upon certain conditions their rights under the purchase contracts therein described, to purchase 106,819 shares of the capital stock of Chicago Yellow Cab Company, Inc., a New York corporation, 19,300 shares of the capital stock of The Parmelee Company, a Delaware corporation, and 85,659 shares of the capital stock of Yellow Taxi Corporation, New York, a New York corporation, being more than 26% of the outstanding stock of Chicago Yellow Cab Company, Inc., more than 96% of the outstanding stock of The Parmelee Company and more than 68% of the outstanding stock of Yellow Taxi Corporation, New York, and it is in the opinion of the Board of Directors of this Company expedient and
2365 desirable that this Company should acquire said stocks upon the terms and conditions of said offer; and

WHEREAS in the judgment of the Board of Directors said shares of stock of Chicago Yellow Cab Company, Inc., The Parmelee Company and Yellow Taxi Corporation, New York, are reasonably worth to this Company more than the consideration required to be paid therefor under the terms of said offer;

RESOLVED that this Company accept said offer of J. A. Sisto & Co. and acquire said purchase contracts on the terms stated in the letter of J. A. Sisto & Co. to this Company dated April 17, 1929, and submitted to this meeting;

RESOLVED that the President or any Vice-President of this Company be, and he hereby is, authorized to write

in the name and on behalf of this Company an acceptance of said offer of J. A. Sisto & Co.;

RESOLVED that the date and place for the consummation of said purchase be left to the discretion of the President of this Company, to take place not later than April 29, 1929;

RESOLVED that for the purposes aforesaid and in accordance with the provisions of said letter this Company issue and deliver its securities required by the terms of said letter, to-wit, $5,000,000, principal amount, of 6% Sinking Fund Convertible Debentures, dated April 1, 1929, due April 1, 1944, an original issue of 10,000 shares of the par value of $100 each, of 6% Cumulative Convertible Preferred Stock and an original issue of 250,000 shares of Common Stock without par value;

RESOLVED that all shares of stock so issued and delivered shall be issued as fully paid and non-assessable;

RESOLVED that, out of the consideration to be received by this Company for the sale of said $5,000,000, principal amount, of Debentures, said $1,000,000, par value, of Preferred Stock and said 250,000 shares of Common Stock without par value, the sum of $4,600,000, representing the excess of the total consideration so to be
2366 received (exclusive of accrued interest and accrued dividends) over the principal amount of said Debentures and the par value of said Preferred Stock, be, and it hereby is, divided between capital and surplus as follows: $2,500,000 thereof shall be, and hereby is, set apart and determined to be capital, represented by said 250,000 shares of Common Stock, without par value, and $2,100,000 thereof shall be, and hereby is, set apart and determined to be surplus; so that the total capital of this Company shall be $3,500,000, represented by 10,000 shares of Preferred Stock of the par value of $100 per share and 250,000 shares of Common Stock without par value;

RESOLVED that in accordance with the terms of said letter this Company execute and deliver to J. A. Sisto & Co. an agreement between J. A. Sisto & Co. and this Company providing, among other things, for the granting by this Company to J. A. Sisto & Co. of an option to purchase 100,000 shares of Common Stock of this Company (upon the terms and conditions to be set forth in said agreement) substantially in the form of the Option Agreement enclosed with said letter and presented to this meeting;

RESOLVED that so long as the option granted by said agreement is in effect there shall be reserved for said option out of the authorized and unissued stock of this Company such number of shares as may from time to time be subject to said option and that upon the exercise of said option, in whole or in part, the proper officers of this Company be, and they hereby are, authorized and directed to execute in the name and on behalf of this Company, and to deliver, the shares of stock of this Company as to which said option is exercised, against payment therefor and otherwise upon the terms and conditions of said agreement;

RESOLVED that the proper officers of this Company be, and they hereby are, authorized and directed to take,
2367 in the name and on behalf of this Company, any and all action which they may deem necessary, expedient or appropriate to accomplish the objects set forth in the foregoing resolutions, including the issue and delivery of said securities of this Company in accordance with the provisions of these resolutions.

The Chairman then stated that all of the incorporators and subscribers named in the Certificate of Incorporation of the Company had assigned their subscriptions to Messrs. J. A. Sisto & Co. and that in accordance with the above letter of said firm to this Company the 250,000 shares of Common Stock of this Company authorized by the foregoing resolutions to be issued to or upon the order of said firm shall be deemed to include the 50 shares of Common Stock of the Company covered by the subscriptions of said incorporators and subscribers. He thereupon submitted to the meeting original assignments of said incorporators and subscribers.

Such original assignments are as follows:

2368 PARMELEE TRANSPORTATION COMPANY

Transfer of Subscription

KNOW ALL MEN BY THESE PRESENTS, That I, W. M. BEHRENS, in consideration of One Dollar ($1.00), lawful money of the United States, and other good and valuable consideration to me paid before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have sold, assigned, transferred and set over, and by these presents do sell, assign, transfer and set over, unto J. A. Sisto & Co. 17 shares of the Common Stock without par value of Parmelee Transportation Company, a Delaware

corporation, subscribed for by me as an incorporator of said Company, and I do hereby request and direct said Company to issue a certificate or certificates for said shares to or upon the order of said J. A. Sisto & Co.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 16th day of April, 1929.

W. M. BEHRENS [L.S.]

Sealed and delivered in the presence of:

• • • • •

(Five Stamps attached.)

2369 PARMELEE TRANSPORTATION COMPANY

Transfer of Subscription

KNOW ALL MEN BY THESE PRESENTS, That I, Otto C. DOERING, JR., in consideration of One Dollar ($1.00), lawful money of the United States, and other good and valuable consideration to me paid before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have sold, assigned, transferred, and set over, and by these presents do sell, assign, transfer and set over, unto J. A. SISTO & Co. 17 shares of the Common Stock without par value of Parmelee Transportation Company, a Delaware corporation, subscribed for by me as an incorporator of said Company, and I do hereby request and direct said Company to issue a certificate or certificates for said shares to or upon the order of said J. A. Sisto & Co.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 16th day of April, 1929.

OTTO C. DOERING, JR. [L.S.]

Sealed and delivered in the presence of:

• • • • •

(Five Stamps attached.)

2370 PARMELEE TRANSPORTATION COMPANY

Transfer of Subscription

KNOW ALL MEN BY THESE PRESENTS, That I, W. H. GAMBRELL, in consideration of One Dollar ($1.00), lawful money of the United States, and other good and valuable consideration to me paid before the ensealing and delivery

of these presents, the receipt whereof is hereby acknowledged, have sold, assigned, transferred and set over, and by these presents do sell, assign, transfer and set over, unto J. A. Sisto & Co. 16 shares of the Common Stock without par value of Parmelee Transportation Company, a Delaware corporation, subscribed for be me as an incorporator of said Company, and I do hereby request and direct said Company to issue a certificate or certificates for said shares to or upon the order of said J. A. Sisto & Co.

In Witness Whereof I have hereunto set my hand and seal this 16th day of April, 1929.

W. H. Gambrell. [L.S.]

Sealed and delivered
in the presence of:

* * * * *

(Four Stamps attached.)

2371 The Chairman stated that it was desirable for the Board of Directors to designate depositaries for the funds of the Company.

After discussion, on motion duly made and seconded, the following resolutions were unanimously adopted:

Resolved that the following banks and trust companies be, and they hereby are, respectively, designated depositaries of the funds of this Company:

* * * * *

Guaranty Trust Company of New York

* * * * *

Resolved that the President of this Company be, and he hereby is, authorized to determine the amount or proportion of funds of this Company which shall be deposited with each depositary;

Resolved that the funds of this Company deposited with any of the above designated depositaries be subject to withdrawal upon checks or other orders for the payment of money when signed on behalf of this Company by the Treasurer or an Assistant Treasurer and countersigned by the President or a Vice-President; provided always that two signatures shall be required for each check and draft issued;

Resolved that any of the above designated depositaries of funds of this Company is hereby authorized to pay any such checks or orders and also to receive the same for the credit of or in payment from the payee or any other holder without inquiry as to the circum-

stances of issue or the disposition of the proceeds even if drawn to the individual order of any officer signing the same or tendered in payment of his individual obligation;

RESOLVED that for the purpose of depositing funds of this Company with any of said depositaries, any officer of this Company may endorse, sign or deliver, on behalf of this Company, any checks, orders or other evidences of indebtedness for the payment of money, payable to it or upon its order;

2372 RESOLVED that the Secretary of this Company be, and he hereby is, authorized to certify to any of the above designated depositaries of funds of this Company that the foregoing resolutions and provisions thereof are in conformity with the Certificate of Incorporation and the by-laws of this Company.

The Chairman then stated that certain individuals interested in the organization of this Company had caused to be organized under the laws of the State of Delaware a corporation known as The Transportation Management Corporation with an authorized capital consisting of 1000 shares of stock without par value, all of the same class and that the organization proceedings of said Corporation had been approved by counsel.

He then stated that it was proposed for the Company to subscribe to all of the authorized stock of The Transportation Management Corporation and to employ said Corporation in the management of corporations in which this Company may acquire stock, as well as other corporations, under management and other favorable contracts, which those interested in the organization of this Company had negotiated and intend to negotiate.

Thereupon, on motion duly made and seconded, the following resolutions were unanimously adopted:

RESOLVED that this Company subscribe to all of the authorized stock of The Transportation Management Corporation, a Delaware corporation, being 1000 shares of stock without par value and all of the same class, for such sum as the President of this Company shall determine, not in excess, however, of the sum of $200,000;

2373 RESOLVED that the Treasurer of this Company be, and he hereby is, authorized and directed to cause to be paid out of the funds of this Company all of the expenses incurred, and disbursements made, in connec-

tion with the organization of Transportation Management Corporation.

The Chairman then stated that it was proposed for the Board of Directors to authorize the listing of $5,000,000, principal amount, 6% Sinking Fund Convertible Debentures, dated April 1, 1929, due April 1, 1944, and 600,000 shares of Common Stock without par value, of the Company on the Chicago Stock Exchange.

Thereupon, on motion duly made and seconded, the following resolution was unanimously adopted:

RESOLVED that the proper officers of this Company be, and they hereby are, authorized to make an application or applications to the Chicago Stock Exchange for the listing on said Exchange of $5,000,000, principal amount, 6% Sinking Fund Convertible Debentures, dated April 1, 1929, due April 1, 1944, and 600,000 shares of Common Stock without par value of this Company, and in connection with such application or applications to execute in the name and on behalf of this Company, under its corporate seal or otherwise, and to deliver all such applications, certificates and other papers as shall be necessary to accomplish such listing; and that Ernest H. Miller, Graham Adams, F. L. Haveron and Milward W. Martin, and each of them, be, and he hereby is authorized and designated as the representative of this Company, with full power of substitution, to appear before the Committee on Stock List of said Exchange or any other Committee thereof, with full authority to furnish such information and to make such changes in said application or applications or in any agreement or agreements relative thereto, as may be necessary to conform to the requirements of said Exchange for the listing thereon of said Debentures and said Common Stock.

2374 The Chairman then stated that it was proposed for the Board of Directors to authorize the listing of said Debentures and said Common Stock on the New York Curb Market.

Thereupon, on motion duly made and seconded, the following resolution was unanimously adopted:

RESOLVED that the proper officers of this Company be, and they hereby are, authorized to make an application or applications to the New York Curb Market for the listing on said Curb Market of $5,000,000, principal amount, 6% Sinking Fund Convertible Debentures,

dated April 1, 1929, due April 1, 1944, and 600,000 shares of Common Stock without par value, of this Company, and in connection with such application or applications to execute in the name and on behalf of this Company, under its corporate seal or otherwise, and to deliver all such applications, certificates and other papers as shall be necessary to accomplish such listing; and that Ernest H. Miller, Graham Adams, F. L. Haveron and Milward W. Martin, and each of them, be, and he herebe is, authorized and designated as the representative of this Company, with full power of substitution, to appear before the Committee on Stock List of said Curb Market or any other Committee thereof, with full authority to furnish such information and to make such changes in said application or applications or in any agreement or agreements relative thereto, as may be necessary to conform to the requirements of said Curb Market for the listing thereon of said Debentures and said Common Stock.

The Chairman then stated that it was desirable to confer general powers upon the officers of the Company in connection with the organization of the Company and the issue and sale of its securities.

Thereupon, on motion duly made and seconded, the following resolution was unanimously adopted:

2375 RESOLVED that the proper officers of this Company be, and they hereby are, authorized, in the name and on behalf of this Company, to execute any and all certificates or other instruments, to pay any and all fees and taxes and to take and perform any and all action which they may deem necessary, expedient or appropriate in connection with the organization of this Company and the sale of its securities as aforesaid, including the making of any application or applications to any stock exchange or exchanges designated by the President of this Company for the listing thereon of not exceeding $5,000,000, principal amount of Debentures and 600,000 shares of Common Stock without par value, of this Company, and the making of any application or applications to any securities commission or other similar body, in any state of the United States, or the taking of any other necessary action to qualify said Debentures and said Common Stock for sale under the Blue Sky Laws, or other similar laws, of any such state, such application to be in such form as the officers of

this Company may determine and as may be required by the rules and regulations of any such stock exchange or by the laws of any such state, and to take and to perform any and all other action which they may deem advisable in the premises.

The Chairman then stated that it was advisable to adjourn the meeting to reconvene at a later date to pass upon certain matters which could not come before the Board at this meeting.

Thereupon, on motion duly made and seconded, the following resolution was unanimously adopted:

RESOLVED that this meeting be, and it hereby is, adjourned to reconvene at the same place at 3:30 o'clock in the afternoon on April 18, 1929.

ERNEST H. MILLER
Chairman of the Meeting

F. L. HAVERON
Secretary of the Meeting

2376 PARMELEE TRANSPORTATION COMPANY

To the Chairman of the Board of
Parmelee Transportation Company:

I, WM. R. DERBY, hereby tender my resignation as a director of Parmelee Transportation Company, effective immediately.

Dated, April 16, 1929.

WM. R. DERBY

2377 State of New York, }
County of New York. } ss.:

A. G. STECKLER, Assistant-Secretary of PARMELEE TRANSPORTATION CORPORATION, a Delaware corporation, being duly sworn upon his oath, deposes and says: that he will faithfully discharge and perform the duties of Assistant-Secretary of said corporation to the best of his ability and understanding.

A. G. STECKLER

Subscribed and sworn to before me
this 19 day of June, 1929.

Vincent T. Cavanagh
Commissioner of Deeds of the City of New York
New York Co. Clerk's No. 30, Reg. No. ....
Term expires January 7th, 1930

2378 *Gov. Ex. 6*

MINUTES of an adjourned meeting of the Board of Directors of PARMELEE TRANSPORTATION COMPANY, a Delaware corporation, held at the office of J. A. Sisto & Co., No. 68 Wall Street, New York City on the 26th day of April, 1929, at ten o'clock in the forenoon pursuant to a resolution duly adopted at a meeting of said Board held on April 18, 1929.

The following directors were present:

Messrs. Ernest H. Miller
Graham Adams
Austin J. Bruff
F. L. Haveron, and
Morrell W. Gaines

being all the members of the Board of Directors of the Company.

The President of the Company, Mr. Ernest H. Miller, called the meeting to order and presided thereat. The Secretary of the Company, Mr. F. L. Haveron, acted as Secretary of the Meeting and kept the minutes thereof.

The Chairman stated that one of the purposes of the meeting was to formally authorize the creation and issue of the $5,000,000, principal amount, of Debentures of the Company which the Company had agreed to sell to Messrs. J. A. Sisto & Co. pursuant to the contract between the Company and that firm dated April 17, 1929, and authorized at the
2379 meeting of the Board of Directors of the Company held on April 16, 1929. He thereupon submitted to the meeting a form of Trust Indenture to be executed between the Company and Guaranty Trust Company of New York, as Trustee, under date of April 1, 1929, together with a specimen, in temporary form, of the Debentures to be issued thereunder.

After discussion, on motion, duly made and seconded, the following resolutions were unanimously adopted:

RESOLVED that this Company for its corporate purposes issue its bonds to be known as its 6% Sinking Fund Convertible Debentures limited to the aggregate principal amount of $5,000,000 at any one time outstanding in denominations of $1,000 and $500 each (not interchangeable), in coupon form, registerable as to principal, to be dated April 1, 1929, to be payable April 1, 1944, to bear interest from April 1, 1929, at the rate of six per centum per annum, payable semi-annually on April 1 and October 1 in each year until

paid, to be payable as to both principal and interest at the principal office of Guaranty Trust Company of New York, in the Borough of Manhattan, in the City of New York, or, at the option of the holders of the coupons therefor, as to the payment of interest, at the principal office of The Foreman Trust and Savings Bank, in the City of Chicago, Illinois, in gold coin of the United States of America, of or equal to the standard of weight and fineness as it existed April 1, 1929, without deduction for any normal Federal Income tax not exceeding 2% per annum which the Company of the Trustee may be required to pay thereon or to retain therefrom under any present or future law of the United States of America; the Company also to reimburse the owner of any Debenture upon proper application for any personal property or similar taxes not exceeding 5½ mills per annum and any income taxes not exceeding 6% per annum legally assessed upon and paid by him under the laws of any State of the United
2380 States by reason of his ownership of such Debenture; and said Debentures to be redeemable as a whole or in part at the option of the Company or for the sinking fund to be created in the Trust Indenture under which said Debentures shall be issued at any time on thirty days prior notice at 105% of their principal amount and accrued interest, all as shall be provided in the Trust Indenture under which the Debentures shall be issued, and each Debenture to be convertible at the option of the holder into shares of Common Stock of the Company at the rate of 33⅓ shares for each $1000 principal amount of Debentures (subject to adjustment as provided in said Trust Indenture) at any time prior to maturity or previous redemption;

RESOLVED that the form and terms of the Trust Indenture to be made to Guaranty Trust Company of New York, as Trustee, under which said $5,000,000, principal amount of 6% Sinking Fund Convertible Debentures of the Company are to be issued, submitted to this meeting, and the forms of the 6% Sinking Fund Convertible Debentures in temporary and definitive form, and of the coupons to be attached to the definitive Debentures, and of the Trustee's certificate of authentication, as contained in said Trust Indenture be, and the same hereby are, approved, and that the President or a Vice-President, and the Secretary or an As-

sistant Secretary of this Company be, and they hereby are, respectively, authorized and directed on behalf of this Company and under its corporate seal to execute, acknowledge and deliver to Guaranty Trust Company of New York, as Trustee, a Trust Indenture substantially in the form presented to this meeting, with such modifications and changes as the officers executing the same may approve;

RESOLVED that the President or a Vice-President of the Company, and the Secretary or an Assistant Secretary of this Company be, and they hereby are, authorized and directed to execute in the name and on behalf of this Company, and under its corporate seal said $5,000,000 principal amount of 6% Sinking Fund Convertible Debentures substantially in the form set forth in said Trust Indenture, and that when executed, the Secretary, or an Assistant Secretary of this Com-
2381 pany be, and each of them hereby is, authorized to deliver said Debentures to the Trustee named in said Trust Indenture for authentication in accordance with the terms of said Trust Indenture;

RESOLVED that the President, or a Vice-President, or the Treasurer, or Assistant Treasurer, or the Secretary or an Assistant Secretary of this Company, be, and each of them hereby is, authorized and directed to sign on behalf of this Company and under its corporate seal any writing or other instrument necessary or proper under the terms of said Trust Indenture to obtain the authentication and delivery of said $5,000,000 6% Sinking Fund Convertible Debentures to or upon the order of this Company, and generally from time to time to do or cause to be done any and all acts and things required by any of the provisions of said Trust Indenture, or in their judgment necessary, proper or convenient in order to obtain the authentication and delivery of said Debentures;

RESOLVED that until definitive 6% Sinking Fund Convertible Debentures shall have been prepared, this Company shall execute and deliver in accordance with said Trust Indenture temporary printed 6% Sinking Fund Convertible Debentures, without coupons, of the denomination of $500 or $1,000 or any multiple of $1,000 as the officers of this Company executing the same may from time to time determine, exchangeable for defini-

tive debentures when prepared, and otherwise substantially of the tenor of the temporary debentures submitted to this meeting;

RESOLVED that the Trustee underssaid Trust Indenture be, and it hereby is, authorized and requested from time to time in accordance with the provisions of said Trust Indenture and upon presentation to it of temporary 6% Sinking Fund Convertible Debentures of this Company duly executed by the officers of this Company substantially in the form authorized in said Trust Indenture and these resolutions to authenticate and deliver said Debentures as in said Trust Indenture provided, and that said Trustee, when it shall have
2382 been furnished by the proper officers of this Company with definitive Debentures duly executed by the proper officers of this Company as in said Trust Indenture provided, be, and it hereby is, authorized and directed to authenticate and deliver such definitive Debentures in exchange for and upon the cancellation of outstanding temporary Debentures surrendered to it for that purpose, as in said Trust Indenture provided;

RESOLVED that this Company reserve 166,666⅔ shares of its Common Stock without par value for the conversion of the entire principal amount of the 6% Sinking Fund Convertible Debentures to be issued under its Trust Indenture dated April 1, 1929;

RESOLVED that this Company issue shares of its Common Stock without par value, from time to time and as often as and when Debentures shall be presented for conversion for shares of Common Stock of this Company, in accordance with the provisions of said Trust Indenture and that all shares of common stock so issued shall be deemed to be fully paid and non-assessable;

RESOLVED that the proper officers of this Company be, and they hereby are, authorized and directed to cause to be issued certificates for the shares of Common Stock of this Company upon conversion of Debentures in accordance with the provisions of these resolutions and the Trust Indenture hereinbefore authorized;

RESOLVED that all shares of common stock without par value of this Company issued upon conversions of said Debentures shall be deemed to have been issued

for an amount in dollars equal to the aggregate conversion price at which such shares shall be issued and that in the case of each conversion of Debentures the consideration so received shall be divided between a capital and surplus as follows: 33⅓% thereof shall be deemed to be capital and shall be credited to capital account and 66⅔% thereof shall be deemed to be surplus and shall be credited to surplus account;

RESOLVED that the consideration received by this Company for the issue of shares of its Common Stock without par value upon the exercise of the options heretofore authorized by this Company to be issued to J. A. Sisto & Co., Ernest H. Miller and Morris
2383 Markin, shall be divided between capital and surplus as follows: 33⅓% thereof shall be deemed to be capital and shall be credited to capital account and 66⅔% thereof shall be deemed to be surplus and shall be credited to surplus account;

RESOLVED that the officers of this Company be, and they hereby are, authorized and directed generally to take any and all action which in their judgment is necessary, proper or convenient in order to carry any and all of the foregoing resolutions fully into effect and to do or cause to be done in their discretion any other or further acts and things that may be neecssary or proper in order fully and punctually to perform any and every covenant and provision in this Company's 6% Sinking Fund Convertible Debentures and the Trust Indenture under which ~~said~~ Debentures are issued contained, on its part to be performed and that all action heretofore at any time taken by an officer or agent of this Company in anticipation of the foregoing authorization of this Board or in furtherance of any action hereby contemplated, be and the same hereby is, in all respects authorized, adopted, ratified, approved and confirmed.

The Chairman then presented to the meeting for ratification the following agreement, which had been entered into between the Company and J. A. Sisto & Co. under date of April 17, 1929, and the covenants of which on the part of the Company form a part of the consideration for the agreement of J. A. Sisto & Co. to purchase the securities of the Company as authorized at the meeting of the Board held on April 16, 1929. Said agreement is as follows:

April 17, 1929

Parmelee Transportation Company,
7 West Tenth Street,
Wilmington, Delaware

Dear Sirs:

In consideration of our agreement with your of even date, executed contemporaneously herewith,
2384 providing for the purchase by us of $5,000,000 principal amount, of your 6% Sinking Fund Convertible Debentures, 10,000 shares of your 6% Cumulative Convertible Preferred Stock and 250,000 shares of your Common Stock, this is to state for your confirmation that you have agreed with us as follows:

1. The certificates for all of the shares of stock of Chicago Yellow Cab Company, Inc., of Yellow Taxi Corporation, New York, and of The Parmelee Company, which you shall purchase pursuant to our said contract, are forthwith, upon their delivery to you, to be deposited by you with National Bank of Commerce in New York, or some other bank or trust company satisfactory to us, under an agreement whereby, during the life of your Debentures which we purchase, or for a period of ten years from the date of this letter, whichever is longer, the certificates cannot be released by such bank or trust company except on the written consent of ourselves and of White, Weld & Co. We shall not be obligated to give this consent except in our own discretion.

2. We are to be the Bankers for your Company and you will not hereafter while any of said Debentures shall remain outstanding, or for a period of ten years, whichever is longer, issue and sell or cause to be
2385 issued and sold any stocks, bonds, notes or other securities of your Company or of any of its subsidiary corporations without offering to us the prior right to purchase the same on as favorable terms as they shall be offered to others and in each case giving us thirty days within which to accept or reject such offer.

Yours very truly,

J. A. Sisto & Co.
by (Signed) Graham Adams

Accepted:
Parmelee Transportation Company
by (Signed) E. H. Miller
President

The foregoing letter having been read, the following resolutions were unanimously adopted:

RESOLVED that the execution and acceptance on behalf of this Company of the foregoing letter submitted to the Board be, and the same hereby is, confirmed, ratified and approved, and that the officers of this Company be and they hereby are authorized to do all things necessary or proper to carry the same into effect;

RESOLVED that the officers of this Company are authorized and directed, in the name and on behalf of this Company, to enter into an agreement with the National Bank of Commerce in New York, or such other bank or trust company as shall be selected pursuant to the foregoing letter, to carry out the intent of the said agreement.

2386 The Chairman then stated that officers of the Company had caused to be organized under the laws of the State of Delaware, a corporation known as Automotive Sales Corporation, with an authorized capital stock of 1,000 shares without par value, all of the same class, and that it was proposed for the Company to subscribe for all of the authorized capital stock of said Corporation.

After discussion, on motion duly made and seconded, the following resolutions were unanimously adopted:

RESOLVED that this Company subscribe to all of the authorized stock of Automotive Sales Corporation, a Delaware corporation, being 1,000 shares without par value, all of the same class, for the sum of $1.00 in cash;

RESOLVED that the Treasurer of this Company be, and he hereby is, authorized and directed to cause to be paid out of the funds of this Company all of the expenses incurred, and disbursements made, in connection with the organization of Automotive Sales Corporation.

The Chairman then submitted to the meeting a copy of the prospectus letter dated April 17, 1929, written by Ernest H. Miller, as President of the Company, to Messrs. White, Weld & Co. and J. A. Sisto & Co. describing the securities sold by the Company to J. A. Sisto & Co. He then stated that it was proposed for the Board of Directors to formally approve and ratify the action of the President in writing said letter.

Thereupon, on motion duly made and seconded, the following resolution was unanimously adopted:

2387 RESOLVED that the action of Ernest H. Miller, President of this Company, in writing the letter dated April 17, 1929, to Messrs. White, Weld & Co. and J. A. Sisto & Co., a copy of which has been submitted to this meeting be, and it hereby is, in all respects approved and ratified.

The Chairman then stated that for the purpose of providing a place of safe keeping for valuable papers of the Company, the officers of the Company had rented a safe deposit box from The Equitable Safe Deposit Company of New York at a rental of $40 per year and that it was proposed for the Board of Directors to ratify the action of the officers of the Company in renting such box, and designate certain officers of the Company who should have access to the box.

Thereupon, on motion duly made and seconded, the following resolutions were unanimously adopted:

RESOLVED that the action of the officers of this Company in renting in the name and on behalf of this Company, a safe deposit box from The Equitable Safe Deposit Company of New York at a rental of $40 per year be, and it hereby is, in all respects approved and ratified.

RESOLVED that access to the safe deposit box standing in the name of this Company in the vaults of The Equitable Safe Deposit Company of New York shall be, subject to the rules and regulations of said Safe Deposit Company, by any two of the following name individuals jointly: Ernest H. Miller, President, Morrell W. Gaines, Vice-President, F. L. Haveron, Secretary and Treasurer and A. G. Steckler, Assistant Secretary and Assistant Treasurer.

The Chairman then stated that inasmuch as there were other matters to come before the Board which could
2388 not be taken up at this time, it was desirable to adjourn the meeting to reconvene at a later date.

Thereupon, on motion duly made and seconded, the following resolution was unanimously adopted:

RESOLVED that this meeting be, and it hereby is, adjourned to reconvene at the same place at 11:30 o'clock in the forenoon on April 29, 1929.

E. H. MILLER
Chairman of the Meeting

F. L. HAVERON
Secretary of the Meeting

2389 **Parmelee Transportation Company** BB #3

$5,000,000
6% Sinking Fund Convertible Debentures

250,000 Shares Common Stock

Part of these securities have been withdrawn by Messrs. Hayes & Sons of London, England, for sale Abroad.

These Debentures will be issued under an Indenture between the Company and Guaranty Trust Company of New York as Trustee, will be dated April 1, 1929 and will mature April 1, 1944. Interest payable April 1 and October 1 at the office of the Trustee, without deduction for normal Federal Income Tax not exceeding 2% per annum. The Company will agree to reimburse to any holder of Debentures upon application as provided in said Indenture, any personal property or similar tax not exceeding 5½ mills per annum and any State Income Tax not exceeding 6% per annum, which in any case may be legally assessed under any present or future law of any State of the United States and paid by any such holder by reason of his ownership thereof. Redeemable as a whole or in part at the option of the Company, or for the sinking fund, at any time upon 30 days' notice at 105% and accrued interest, with right to convert Debentures into stock continuing to redemption date. These Debentures will be in coupon form in denominations of $1,000 and $500, registerable as to principal only.

GUARANTY TRUST COMPANY OF NEW YORK, TRUSTEE.

CONVERSION PRIVILEGE

The Debentures will be convertible at any time prior to maturity or redemption at the option of the holder into shares of Common Stock of the Company in the ratio of 33⅓ shares for each $1,000 principal amount of Debentures (being at the rate of $30 per share).

On all Debentures presented for conversion, adjustment of interest will be made. The Indenture will provide for adjustment of conversion rates in the event of certain changes in capitalization, consolidation, etc.

CAPITALIZATION

	Authorized	*Outstanding*
Funded Debt:		
6% Sinking Fund Convertible Debentures, due April 1, 1944	$5,000,000	$5,000,000
Stocks:		
6% Cumulative Convertible Preferred Stock ($100 par value)*	$1,000,000	$1,000,000
Common Stock (without par value)	**1,000,000 shs.	250,000 shs.

* Limited to 6% as to dividends; redeemable at option of Company and entitled in dissolution in preference to the Common Stock at $105 and accrued dividends per share.

** There are to be presently outstanding options or warrants evidencing the rights of holders thereof to purchase at $30 per share, at any time prior to April 1, 1934, 150,000 shares of Common Stock; 166,666⅔ shares of Common Stock are reserved for conversion of the Debentures of this issue and 33,333⅓ shares are reserved for conversion of the 6% Convertible Preferred Stock at the rate of $30 per share. The option or conversion price of $30 per share is also subject to adjustment as above stated.

All of the Company's preferred stock has been placed privately at par, and a substantial number of shares of its common stock herein offered have been purchased from the Bankers by the Company's Management.

Mr. Ernest H. Miller, President of the Company, summarizes his accompanying letter as follows:

BUSINESS: Parmelee Transportation Company has been organized under the laws of Delaware for the purpose of owning the capital stocks and operating through a wholly owned subsidiary management company the business of various automobile transportation and cab companies located in the principal cities of the United States. The Company will acquire forthwith a controlling interest in the stock of The Parmelee Company, of Chicago, and Yellow Taxi Corporation New York, as well as a substantial amount of the outstanding stock of Chicago Yellow Cab Company, Inc.

The Parmelee Company and its predecessor company have been successfully in business for over 75 years. It handles the delivery of substantially all of the baggage consigned to and from Chicago on all the railroads entering that City, in addition to which the Company operates a bus service to and from all the Chicago railroad stations, the Company's present operating fleet comprising 200 busses and trucks.

Yellow Taxi Corporation, New York, operates a fleet of 1,200 taxicabs. Recognizing the need of dependable transportation for their passengers, all the New York railroad, trans-Atlantic and coastal steamship companies have assigned exclusive stands to the Yellow Taxi Corporation at their passenger terminals and piers. The Company also has preferential stands at many of the leading hotels in New York and Brooklyn. It is planned to increase the number of cabs to 2,500.

Chicago Yellow Cab Company, Inc. operates through a wholly owned subsidiary, a fleet of about 2,200 taxicabs and its taxicabs are also preferentially used at all the railroad terminals and practically all the hotels in Chicago. It is planned to increase the number of cabs to 3,000.

The above companies are all leaders in their field and the largest operators in the industry. The average number of taxicabs in operation by the Yellow Taxi Corporation, New York, and Chicago Yellow Cab Company, Inc., and wholly owned subsidiaries, during 1928 was 3,400, from which the gross receipts were $20,425,860.

These companies will form the nucleus of a transportation system, which its organizers expect, by association with other units, will extend throughout the country. It will also enable the Company to offer the riding public

transportation at the lowest cost, in the most modern equipment, and with the greatest measure of safety and control. National advertising, aimed to benefit the entire group, will call attention to the advantages of the protection and security afforded by the local units.

ASSETS: Upon the conclusion of this financing the Parmelee Transportation Company will have no liabilities exclusive of these Debentures, and will have net assets of $10,600,000, of which over $2,000,000 will be in cash, the investments of the Company in the stocks above mentioned being taken at cost.

EARNINGS: The accounts of the Yellow Taxi Corporation, New York, and the Chicago Yellow Cab Company, Inc., and their subsidiaries were examined by Arthur Young & Company for the calendar year ended December 31, 1928. The accounts of The Parmelee Company, of Chicago, were examined by independent auditors for the fiscal year ended June 30, 1928.* The following statement prepared from these audits for the above periods by Arthur Young & Company shows the earnings proportionate to the present stock ownership of the Parmelee Transportation Company, adjusted to include an amount of $100,000 equal to 5% interest on minimum cash working capital of $2,000,000 which Parmelee Transportation Company will have upon completion of this financing:

Combined Net Operating Income after providing for Federal Taxes at the current rate for the above periods of the companies in which Parmelee Transportation Co. will have a stock interest	$2,647,860.10
Proportionate amount thereof to stockholdings of Parmelee Transportation Company	$1,088,573.28
Add Interest on minimum cash working capital	100,000.00
Total	$1,188,573.28

The above earnings of $1,188,573.28 are equal to 3.9 times the annual interest charges on these Debentures and such earnings after such interest charges and Preferred dividends are equal to $3.31 per share on the Common Stock to be presently outstanding.

* Net operating income of The Parmelee Company for the year ended June 30, 1928, after Federal Taxes, was $259,579, while such income for the seven months ended January 31, 1929 was $209,982, or at the annual rate of $359,969.

Substantial additional earnings should accrue to the Parmelee Transportation Company, through its wholly owned subsidiary (Transportation Management Corporation), the latter Corporation having concluded manage-

ment and other contracts entitling it to receive from the companies which will be operated under its supervision and others commissions and management fees, including participations in earnings.

The Company has agreed to make application to list both its Debentures and Common Stock on the New York Curb Market and Chicago Stock Exchange.

6% Sinking Fund Convertible Debentures

Price 99½% and interest

Common Stock—$24.50 per share

These Debentures and Common Stock are offered, when, as and if issued and accepted by us, and subject to approval by counsel of all legal matters. It is expected that Interim Receipts or Debentures and Stock Certificates in temporary form will be deliverable on or about April 29th, 1929. The validity of the issue of these securities will be subject to the approval of Messrs. Cravath, deGersdorff, Swaine & Wood for the Bankers and Messrs. Chadbourne, Hunt, Jaeckel & Brown for the Company.

J. A. Sisto & Co.
Members New York Stock Exchange
68 Wall Street New York

The information contained in this circular has been obtained from sources we believe to be reliable, but in no event are any statements herein contained to be considered representations by us.

2390 Parmelee Transportation Company
New York Chicago

April 17th, 1929

Messrs. White, Weld & Co.,
J. A. Sisto & Co.
New York City.

Dear Sirs:

In connection with your offering of $5,000,000, principal amount, of 6% Sinking Fund Convertible Debentures dated April 1, 1929 and 250,000 shares of Common Stock without par value of this Company, I take pleasure in submitting to you the following information:

BUSINESS

Parmelee Transportation Company has been organized under the laws of Delaware for the purpose of owning the capital stocks and operating through a wholly owned sub-

sidiary management company the business of various automobile transportation and cab companies located in the principal cities of the United States. The Company will acquire forthwith a controlling interest in the stock of The Parmelee Company, of Chicago, and Yellow Taxi Corporation, New York, as well as a substantial amount of the outstanding stock of Chicago Yellow Cab Company, Inc.

The Parmelee Company and its predecessor company have been successfully in business for over 75 years. It handles the delivery of substantially all baggage consigned to and from Chicago on all the railroads entering that City, in addition to which the Company operates a bus service to and from all the Chicago railroad stations, the Company's present operating fleet comprising 200 busses and trucks. As of January 31, 1929, this Company had $250,480 in cash and marketable securities. Among its assets the Company owns or leases buildings offering suitable garage facilities for nearly 1,000 vehicles, busses and taxicabs, centrally located for maximum economy of mileage. It is contemplated that Chicago Yellow Cab Company, Inc., will avail itself of this desirable space.

Yellow Taxi Corporation, New York, operates a fleet of 1,200 taxicabs. Recognizing the need of dependable transportation for their passengers, all the New York railroad, trans-Atlantic and coastal steamship companies have assigned exclusive stands to the Yellow Taxi Corporation at their passenger terminals and piers. The Company also has preferential stands at many of the leading hotels in New York and Brooklyn. It is planned to increase the number of cabs to 2,500. This Company owns real estate carried at over $1,000,000 and as of December 31, 1928, had over $490,000 in cash and unpledged marketable securities.

Chicago Yellow Cab Company, Inc., operates, through a wholly owned subsidiary, a fleet of about 2,200 taxicabs and its taxicabs are also preferentially used at all the railroad terminals and practically all the hotels in Chicago. It is planned to increase the number of cabs to 3,000. As of December 31, 1928 this Company had over $3,000,000 in cash and call loans.

The above companies are all leaders in their field and the largest operators in the industry. The average number of taxicabs in operation by Yellow Taxi Corporation, New York and the Chicago Yellow Cab Company, Inc., and wholly owned subsidiaries, during 1928 was about 3,400, from which the gross receipts were $20,425,860.

CAPITALIZATION

	Authorized	*Outstanding*
Funded Debt:		
6% Sinking Fund Convertible Debentures, due April 1, 1944	$5,000,000	$5,000,000
Stocks:		
6% Cumulative Convertible Preferred Stock ($100 par value)*	$1,000,000	$1,000,000
Common Stock (without par value)	**1,000,000 shs.	250,000 shs.

* Limited to 6% as to dividends; redeemable at option of Company and entitled in dissolution in preference to the Common Stock at $105 and accrued dividends per share.

** There are to be presently outstanding options or warrants evidencing the rights of holders thereof to purchase at $30 per share, at any time prior to April 1, 1934, 150,000 shares of Common Stock; 166,666⅔ shares of Common Stock are reserved for conversion of the Debentures of this issue and 33,333⅓ shares are reserved for conversion of the 6% Convertible Preferred Stock at the rate of $30 per share. The option or conversion price of $30 per share is also subject to adjustment.

All of the Company's preferred stock has been placed privately at par, and a substantial number of shares of its outstanding common stock referred to herein have been purchased from the Bankers by the Company's Management.

Assets

Upon the conclusion of this financing the Parmelee Transportation Company will have no liabilities exclusive of these Debentures, and will have net assets of $10,600,000, of which over $2,000,000 will be in cash, the investments of the Company in the stocks above mentioned being taken at cost.

Earnings

The accounts of the Yellow Taxi Corporation, New York, and the Chicago Yellow Cab Company, Inc., and their subsidiaries were examined by Arthur Young & Company for the calendar year ended December 31, 1928. The accounts of The Parmelee Company, of Chicago, were examined by independent auditors for the fiscal year ended June 30, 1928.* The following statement prepared from these audits for the above periods by Arthur Young & Company shows the earnings proportionate to the present stock ownership of the Parmelee Transportation Company, adjusted to include an amount of $100,000 equal to 5% interest on minimum cash working capital of $2,000,000 which Parmelee Transportation Company will have upon completion of this financing:

Combined Net Operating Income after providing for Federal Taxes at the current rate for the above periods of the companies in which Parmelee Transportation Co. will have a stock interest	$2,647,860.10
Proportionate amount thereof to stockholdings of Parmelee Transportation Company	$1,088,573.28
Add: Interest on minimum cash working capital	100,000.00
Total	$1,188,573.28
Annual interest on 6% Convertible Debentures	300,000.00
	$ 888,573.28
Annual dividend requirements on 6% Preferred Stock	60,000.00
Balance accruing to Common Stock of Parmelee Transportation Co.	$ 828,573.28

or $3.31 per share

The above earnings of $1,188,573.28 are equal to 3.9 times the annual interest charges on these Debentures and such earnings after such interest charges and Preferred dividends are equal to $3.31 per share on the Common Stock to be presently outstanding.

* Net operating income of The Parmelee Company for the year ended June 30, 1928, after Federal Taxes, was $259,579, while such income for the seven months ended January 31, 1929 was $209,982, or at the annual rate of $359,969.

Substantial additional earnings should accrue to the Parmelee Transportation Company, through its wholly owned subsidiary (Transportation Management Corporation), the latter Corporation having concluded management and other contracts entitling it to receive from the companies which will be operated under its supervision and others commissions and management fees, including participations in earnings.

Sinking Fund

The Debentures are to be entitled to a semi-annual sinking fund beginning October 1, 1929 payable in cash or Debentures, calculated to be sufficient to retire by maturity 50% of the Debentures at any time issued, the sinking fund to be credited with Debentures converted from time to time, but only to an amount not in excess of the sinking fund requirements for the current twelve months period, as more fully specified in the Indenture. The sinking fund, to the extent paid in cash, is to be used for the redemption by lot of debentures at 105%.

Provisions of Issue and Conversion Privilege

These Debentures, of an authorized principal amount limited to $5,000,000 will be issued under a Trust Indenture with Guaranty Trust Company of New York, Trustee.

They will be dated April 1, 1929 and mature April 1, 1944. Interest at the rate of 6% per annum will be payable thereon April 1 and October 1 at the office of the Trustee without deduction for normal Federal Income Tax not exceeding 2% per annum. The Company will agree to reimburse to any holder of Debentures upon application, as provided in the Indenture, any personal property or similar tax not exceeding 5½ mills per annum and any State income tax not exceeding 6% per annum, which in any case may be legally assessed under any present or future law of any State of the United States and paid by such holder by reason of his ownership thereof. The Debentures will be redeemable as a whole or in part at the option of the Company or for the sinking fund at any time upon 30 days' notice at 105% and accrued interest, with the right to convert Debentures into common stock continuing to the redemption date. The Debentures will be in coupon form in denomination of $1,000 and $500 registerable as to principal only. The Debentures are convertible during their life into Common Stock of the Company at the rate of $30 per share, with adjustment of interest. The indenture will provide for adjustment of conversion rates in the event of certain changes in capitalization, consolidation, etc.

The Indenture under which these Debentures will be issued will provide in substance, among other things that, so long as any of these Debentures remain outstanding, neither the Company nor any subsidiary thereof, will at any time mortgage, pledge or create any lien upon any of the property of the Company or any of its subsidiary corporations, other than to the Company, (this restriction not to apply to purchase money mortgages or liens existing on property at the time of the acquisition thereof). The Indenture will also provide that, so long as any of these Debentures remain outstanding, the Company will maintain its net assets (figured as the Company shall determine on either a cost or market basis) at not less than 150% of its liabilities, including outstanding Debentures.

Management

Mr. Charles A. McCulloch will continue as Chairman of The Parmelee Company and Chairman of Chicago Yellow Cab Company, Inc., and the management of Parmelee Transportation Company will be under the executive direction of the undersigned and his organization.

Yellow Taxi Corporation, New York, has been under my management for the last two years, during which period the cost of operation per mile, including increased depreciation, has been decreased about 18% and the mileage per cab operated has been increased 40%. The Company is at the present time showing satisfactory earnings and is in a prosperous condition.

OPERATIONS AND FUTURE DEVELOPMENT

The Hack License Bureau of New York City reports 21,306 taxicabs in active operation in 1928. In Chicago there are approximately 6,000 taxicabs.

Among the important advantages which should accrue to the Company and the companies the stocks of which it owns are economies in the fleet buying of cabs and trucks, volume purchases of supplies, gasoline, etc.; savings on insurance costs, unified management, elimination of overhead and other duplication through centralization and improvement of service facilities, and standardization of equipment, and stabilization of the industry.

These companies will form the nucleus of a transportation system, which its organizers expect, by association with other units, will extend throughout the country. It will also enable the Company to offer the riding public transportation at the lowest cost, in the most modern equipment, and with the greatest measure of safety and control. National advertising, aimed to benefit the entire group, will call attention to the advantages of the protection and security afforded by the local units.

Yours very truly

(Signed) ERNEST H. MILLER
President

2391 PARMELEE TRANSPORTATION COMPANY

PRO FORMA BALANCE SHEET

(Upon completion of this financing)

(Prepared on the basis set forth in the Certificate at the foot hereof)

ASSETS

CURRENT:	
Cash in Banks	$ 2,052,417.50
Investments (at cost)	8,547,582.50
	$10,600,000.00

LIABILITIES

FUNDED DEBT:			
6% Sinking Fund Convertible Debentures			$ 5,000,000.00
CAPITAL STOCK:			
6% Cumulative Convertible Preferred Stock (par value $100 per share)**			
Authorized and Issued,	10,000 shares	$ 1,000,000.00	
Common Stock (no par value):			
Authorized:	*1,000,000 shares		
Issued:	250,000 shares	$ 2,500,000.00	
Paid in surplus		$ 2,100,000.00	5,000,000.00
			$10,000,000.00

** Limited to 6% as to dividends; redeemable at the option of the Company and entitled in dissolution in preference to the Common Stock at $105 and accrued dividends per share.

* There are to be presently outstanding options or warrants evidencing the rights of holders thereof to purchase at $30 per share 150,000 shares of Common Stock. 166,666⅔ shares of stock are reserved for conversion of the Debentures of this issue and 33,333⅓ shares are reserved for conversion of the 6% Convertible Preferred Stock at the rate of $30 per share.

We have examined the contracts relating to the organization of the Parmelee Transportation Company and the acquisition by it of investments in the Capital Stocks of The Parmelee Company, Yellow Taxi Corporation, New York, and Chicago Yellow Cab Company, Inc. We have also examined the agreements covering the sale by Parmelee Transportation Company of $5,000,000 15-year 6% Sinking Fund Convertible Debentures and 10,000 shares of 6% Cumulative Preferred Stock of the par value of $100 per share and 250,000 shares of Common Stock without par value, and

WE HEREBY CERTIFY that the above Pro Forma Balance Sheet is in accordance with the terms of these contracts and the application of the proceeds to be received in connection therewith.

April 17, 1929.

(Signed) ARTHUR YOUNG & COMPANY

2392 *Gov. Ex. 7*

MINUTES of an Adjourned Meeting of the Board of Directors of PARMELEE TRANSPORTATION COMPANY, a Delaware corporation, held at the office of J. A. Sisto & Co., No. 68 Wall Street, New York City, on April 18, 1929, at 3:30 o'clock in the afternoon pursuant to a resolution duly adopted by said Board at a meeting held on April 16, 1929.

The following directors were present:
Messrs. Ernest H. Miller,
Graham Adams,
Austin J. Bruff,
F. L. Haveron, and
Murrell W. Gaines
being all of the members of the Board of Directors of the Company.

Mr. Ernest H. Miller, Chairman of the Board, called the meeting to order and presided, and Mr. F. L. Haveron, Secretary of the Company, acted as Secretary of the Meeting.

The Chairman then stated that it was desirable for the Board of Directors to appoint Transfer Agents and Registrars in New York and Chicago for the Common Stock without par value of the Company, such Transfer Agents to be also agents of the Company for accepting Debentures and Preferred Stock of the Company surrendered for conversion into Common Stock.

Thereupon, on motion duly made and seconded, the
2393 following preambles and resolutions were unanimously adopted:

WHEREAS, this Company has authorized the listing on the New York Curb Market and on the Chicago Stock Exchange of $5,000,000, principal amount, of 6% Sinking Fund Convertible Debentures (hereinafter called the debentures) to be dated April 1, 1929, to mature April 1, 1944, and to be issued under a Trust Indenture (hereinafter called the Trust Indenture) to be dated April 1, 1929, between this Company and Guaranty Trust Company of New York, as Trustee, and 600,000 shares of Common Stock without par value, of this Company (hereinafter called common stock); and

WHEREAS, in connection with such listing, it will be necessary for this Company to appoint Transfer Agents and Registrars for the common stock in New York and in Chicago, such Transfer Agents to be also agents of this Company for accepting debentures and 6% Cumulative Convertible Preferred Stock of this Company (hereinafter called preferred stock) for conversion into common stock;

RESOLVED

FIRST: That Guaranty Trust Company of New York, and The Foreman Trust and Savings Bank, Chicago, be, and they hereby are, appointed agents

of this Company, each with the title of "Transfer Agent," for the transfer of certificates, whether temporary or definitive, for the common stock of this Company (the terms "Transfer Agent" or "Transfer Agents" and "Registrar" or "Registrars" as hereinafter used in reference to the common stock, being intended to refer to the Transfer Agents or the Registrars, as the case may be, of the common stock unless otherwise specifically stated);

SECOND: That for the purpose of an original issue of certificates for common stock, Guaranty Trust Company of New York is hereby directed

1. to record and countersign as Transfer Agent certificates, when signed by, or having affixed thereto the facsimile signatures of, the President or a Vice-President and the Secretary or an As-
2394 sistant Secretary or the Treasurer or an Assistant Treasurer of this Company, under the seal of this Company or a facsimile thereof, in such names and for such amounts, not exceeding in the aggregate 400,000 shares, of the common stock as this Company may direct in writing, signed by its President or a Vice-President or its Secretary or its Treasurer;

2. to deliver said certificates to The Public National Bank & Trust Company of New York, Registrar in New York, for the common stock for registration and countersignature; and

3. to deliver said certificates, when so countersigned to or upon the written order of this Company signed by its President, or a Vice-President or its Secretary or its Treasurer, under its corporate seal.

THIRD: That Guaranty Trust Company of New York and The Foreman Trust and Savings Bank be, and they hereby are, appointed agents of this Company to accept for conversion, as hereinafter provided, at any time prior to April 1, 1944, the surrender of any debenture or debentures, whether temporary or definitive, when duly signed by the President or a Vice-President and the Secretary or an Assistant Secretary of this Company and authenticated by the Trustee, as provided in the Trust Indenture, and if registered as to principal, properly endorsed, and accompanied by all unmatured coupons

(except in the case of temporary debentures without coupons), except, in the case of debentures called for redemption and moneys for the redemption of which shall have been provided by the Company and advice thereof shall have been furnished by the Company to the Transfer Agents, from and after the date designated for such redemption, when and as the bearers or registered holders thereof shall by such surrender exercise their right to convert debentures into common stock pursuant to the Trust Indenture.

FOURTH: That said Transfer Agents be, and each of them hereby is, authorized and directed when and as they, as agents of this Company, shall 2395 have accepted the surrender of any debenture or debentures in accordance with the foregoing paragraph Third 2396

1. to record on their transfer records and to countersign as Transfer Agent, when signed by, or bearing the facsimile signatures of, the proper officers of this Company, under its corporate seal or facsimile of said seal, as above provided, an original issue of certificates for not exceeding in the aggregate an additional 166,666⅔ shares of common stock, in the case of each conversion, until otherwise notified by the proper officers of this Company, for the number of full shares of common stock, taken at $30 per share, into which the debentures so surrendered for conversion, taken at their aggregate principal amount, shall be convertible, as provided in the Trust Indenture, and in such name or names as the bearer or registered holder of the debenture or debentures so surrendered shall in writing direct;

2. to deliver such certificates for common stock to the Registrar in the same city as the Transfer Agent so countersigning the same, to wit: The Public National Bank & Trust Company of New York, in New York, and Continental Illinois Bank and Trust Company, in Chicago, for registration and countersignature; and

3. to deliver such certificates when so countersigned by such Registrar to or upon the order of the bearer or registered holder of the debenture or debentures so surrendered, and simultaneously

to pay to or upon the order of such bearer or registered holder, for account of this Company, an amount in cash equal to the sum of (a) the difference between the aggregate principal amount of the debenture or debentures so surrendered and the highest multiple of $30 contained in such principal amount plus (b) interest on such debenture or debentures at the rate of 6% per annum from the next preceding interest payment date for such debenture or debentures to the date of such surrender (and until otherwise instructed by this Company no adjustment shall be made in
2396 respect of dividends on common stock issued upon conversions of debentures).

FIFTH: That Guaranty Trust Company of New York and The Foreman Trust and Savings Bank be, and they hereby are, appointed agents of this Company to accept for conversion, as hereinafter provided, at any time and from time to time the surrender of any certificate or certificates for one or more shares of preferred stock when signed by, or bearing the facsimile signatures of the President or a Vice-President and the Secretary or an Assistant Secretary or the Treasurer or an Assistant Treasurer of this Company, under its corporate seal or a facsimile thereof, countersigned by The Chemical National Bank of New York, Transfer Agent for the preferred stock and The Public National Bank & Trust Company of New York, Registrar of the preferred stock, and properly endorsed except, in the case of shares of preferred stock duly called for redemption and moneys for the redemption of which shall have been provided by the Company and advice thereof shall have been furnished by the Company to the Transfer Agents, from and after the date designated for such redemption, when and as the holders thereof shall by such surrender exercise their right to convert shares of preferred stock into common stock, pursuant to the provisions of the certificate of incorporation of this Company.

SIXTH: That said Transfer Agents be, and each of them hereby is, authorized and directed, when and as they as agents of this Company shall have accepted the surrender of any certificate or certificates for shares of preferred stock in accordance with the foregoing Paragraph Fifth,

1. to record on their transfer records and to countersign as Transfer Agent, when signed by, or bearing the facsimile signatures of, the proper officers of this Company, under its corporate seal or a facsimile thereof, as above provided, an original issue of certificates for not exceeding in the aggregate an additional 33,333⅓ shares of common stock, in the case of each conversion, until otherwise notified by the proper officers of this Company, for the number of full shares of common stock, taken at $30 per share, into which the share or shares of preferred stock so surrendered for conversion, taken at their aggregate par value, shall be convertible, as provided in the certificate of incorporation of this Company, and in such name or names as the holder of said certificate or certificates so surrendered shall in writing direct;

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2. to deliver such certificates for common stock to the Registrar in the same city as the Transfer Agent so countersigning the same for registration and countersignature; and

3. to deliver such certificates when so countersigned by such Registrar to or upon the order of the holder of the certificate or certificates for preferred stock so surrendered, and simultaneously to pay to or upon the order of such holder, for account of this Company, an amount in cash equal to the sum of (a) the difference between the aggregate par value of the shares of preferred stock so surrendered and the highest multiple of $30 contained in such par value, plus (b) an adjustment of dividends on the shares of preferred stock so surrendered in such amount and calculated in such manner as this Company shall from time to time instruct the Transfer Agents in writing signed by its President or its Secretary.

SEVENTH: That each of said Transfer Agents be, and it hereby is, directed

1. to advise the other Transfer Agent, the Trustee, and this Company from day to day of all conversions of debentures into common stock effected by it;

2. to advise the other Transfer Agent and the Transfer Agent for the preferred stock and this

Company from day to day of all conversions of preferred stock into common stock effected by it; and

2398 3. to advise this Company from day to day of all sums of money paid for account of this Company in connection with conversions of debentures and/or preferred stock into common stock as above provided.

EIGHTH: That said Transfer Agents and each of them be, and it hereby is, directed to make transfers from time to time upon the books of the Company of such certificates for common stock as may be surrendered for transfer, properly endorsed and duly stamped, as may be required by the laws of New York or Illinois, as the case may be, and of the United States of America, and signed by, or bearing the facsimile signatures of, the proper officers of this Company, under its corporate seal or a facsimile thereof, as above provided, and countersigned by either of said Transfer Agents and either of said Registrars, and to record and countersign new certificates accordingly when the same shall have been signed by, or shall bear the facsimile signatures of, the proper officers of this Company under its corporate seal or a facsimile thereof, as above provided, and to deliver said certificates to the Registrar for countersignature, as provided in paragraph Fourth, and when so countersigned to deliver the same to or upon the order of the persons entitled thereto.

NINTH: That it is the intention and purpose of this resolution that certificates for the common stock shall be freely transferable in the cities of New York and Chicago, and the fact of the recording and countersignature of new certificates, whether by way of original issue or upon a transfer, shall be advised immediately by mail by the Transfer Agent countersigning the same to the order Transfer Agent, and each Transfer Agent shall be fully protected and held harmless by this Company by reason of its failure or refusal to transfer any certificates countersigned by the other Transfer Agent when it shall not have received such notice of the issue or countersignature of such certificate, and that each Transfer Agent shall keep complete records show-

2399 ing the issue and transfer of all shares of common

stock issued and transferred by either of the Transfer Agents.

TENTH: That specimen signatures of the officers of this Company authorized to sign debentures and certificates for stock, as aforesaid, and specimen signatures of the officers of the Transfer Agents and Registrars authorized to sign for them, respectively, be lodged immediately with each of the Transfer Agents to be used by them and each of them for the purposes of comparison, and that the Transfer Agents and each of them shall be protected and held harmless in recognizing and acting upon any signature or certificate believed in good faith to be genuine and when any officer of the Company or of any Transfer Agent or Registrar shall no longer be vested with authority to sign for the Company or for such Transfer Agent or Registrar, as the case may be, written notice thereof shall immediately be given to each Transfer Agent, and until receipt of such notice, the Transfer Agents shall be protected and held harmless in recognizing and acting upon certificates bearing the signature of such officer or a signature believed by them or either of them to be such genuine signature or, in the case of officers of the Company, a facsimile thereof.

ELEVENTH: That in the event any stock certificates shall become lost, stolen or destroyed before any new certificate or certificates shall be issued in lieu thereof, a satisfactory indemnity bond shall be required in such amount as may be provided by the by-laws of this Company and in any event for not less than the value of the shares of stock represented by such certificate wherein the Transfer Agent countersigning such new certificate shall be named as one of the obligees, and such bond shall be in all respects satisfactory to such Transfer Agent.

TWELFTH: That when either of the Transfer Agents deems it expedient, it may apply to any of the officers of this Company or to its counsel for instructions or advice and for its action in accordance
2469 with such instructions or advice this Company will fully protect and hold it harmless from any and all liability, and neither of the Transfer Agents shall be in any manner liable for any act or omission of the other Transfer Agent.

THIRTEENTH: That the President or a Vice-President or the Secretary or an Assistant Secretary or the Treasurer or an Assistant Treasurer of this Company be, and each of them hereby is, authorized to certify a copy of these resolutions under the seal of this Company, and to lodge the same together with a specimen debenture, specimen certificates for the preferred stock and the common stock of this Company in the form duly adopted by it, certified copies of the certificate of incorporation and by-laws of this Company and a certified copy of the Trust Indenture, when prepared, with each of the Transfer Agents, and to furnish to each of the Transfer Agents certified copies of any amendments that may from time to time be made to such certificate of incorporation or by-laws; and

FOURTEENTH: That the Transfer Agents and each of them, unless otherwise specifically instructed by the President or a Vice-President or the Secretary or the Treasurer of this Company in issuing certificates for shares of the common stock of this Company may use any certificates for such stock that may be on hand from time to time signed by, or bearing the facsimile signatures of, the proper officers of this Company, as above provided, notwithstanding that the person or persons who have signed such certificates as such officers or whose facsimile signatures shall be so affixed shall be no longer in office at the time of such use, and such certificates may be countersigned by either of the Transfer Agents or either of said Registrars, with the same effect and validity as if said persons were still in office.

RESOLVED that The Public National Bank & Trust Company of New York and Continental Illinois Bank and Trust Company, Chicago, be, and they hereby
2401 are, appointed Registrars of the common stock of this Company for the registration of certificates, whether temporary or definitive, for such stock;

RESOLVED that for the purpose of an original issue of certificates representing common stock, The Public National Bank & Trust Company of New York be, and it hereby is, authorized and directed to record in its register and countersign as Registrar certificates for not exceeding 400,000 shares of common stock of this Company when such certificates shall be received by

it for that purpose from Guaranty Trust Company of New York and shall be signed by, or bear the facsimile signatures of, the President or a Vice-President and the Secretary or an Assistant Secretary or the Treasurer or an Assistant Treasurer of this Company, under the seal of this Company, or bearing a facsimile thereof and countersigned by Guaranty Trust Company of New York as Transfer Agent in New York of the Common Stock of this Company, and to redeliver said certificates when so registered and countersigned, to Guaranty Trust Company of New York;

RESOLVED that for the purpose of conversion of debentures into common stock, pursuant to the provisions of the Trust Indenture, the Registrars be, and they hereby are, authorized and directed at any time and from time to time prior to April 1, 1944, upon the cancellation of any debenture or debentures duly signed by the President or a Vice-President and the Secretary or an Assistant Secretary of this Company and authenticated by the Trustee, as provided in the Trust Indenture, and if registered as to principal, properly endorsed, and accompanied by all unmatured coupons (except in the case of temporary debentures without coupons), except, in the case of debentures called for redemption and moneys for the redemption of which have been provided by the Company and advice thereof shall have been furnished by the Company to the Registrars, from and after the date designated for such redemption.

1. to record in their respective Registers, and to countersign as Registrar, when signed by, or bearing
2402 the facsimile signatures of, the proper officers of this Company under its corporate seal or a facsimile of said seal, as above provided, and countersigned by the Transfer Agent in the same city as the registrar receiving the same, to wit: Guaranty Trust Company of New York, in New York, and The Foreman Trust and Savings Bank, in Chicago, an original issue of certificates for not exceeding in the aggregate an additional 166,666⅔ shares of common stock, in the case of each conversion until otherwise notified by the proper officers of this Company, for the number of full shares of common stock, taken at $30 per share, into which the debenture or debentures so cancelled, taken at their aggregate principal amount,

shall be convertible as provided in the Trust Indenture, when delivered to it for that purpose by the Transfer Agent in the same city as the registrar receiving said certificates; and

2. to redeliver said certificates when so registered and countersigned by said registrar to said Transfer Agent;

RESOLVED that for the purpose of conversion of preferred stock into shares of common stock, pursuant to the provisions of the certificate of incorporation of this Company, the Registrars be, and they hereby are, authorized and directed at any time or from time to time, upon the cancellation of any certificate or certificates for one or more shares of preferred stock of this Company which shall have been signed by, or shall bear the facsimile signatures of the proper officers of this Company, under its corporate seal or a facsimile of said seal, as above provided, countersigned by The Chemical National Bank of New York, Transfer Agent for the preferred stock, and The Public National Bank & Trust Company of New York, Registrar for the preferred stock, and properly endorsed, except, in the case of shares of preferred stock duly called for redemption and money for the redemption of which have been provided by the Company and advice thereof shall have been furnished by the Company to the Registrars, from and after the date designated for such redemption.

2403 1. to record in their respective registers and to countersign as Registrar, when signed by, or bearing the facsimile signatures of the proper officers of this Company, under its corporate seal or under a facsimile of said seal, as above provided, and countersigned by the Transfer Agent in the same city as the Registrar receiving the same, an original issue of certificates for not exceeding in the aggregate an additional 33,333⅓ shares of common stock, in the case of each conversion until otherwise notified by the proper officers of this Company, for the number of full shares of common stock, taken at $30 per share, into which the shares of preferred stock represented by the certificates so cancelled, taken at their aggregate par value shall be convertible, as provided in the certificate of incorporation of this Company, when delivered to it for that purpose by

the Transfer Agent in the same city as the Registrar receiving said certificates; and

2. to redeliver said certificates when so registered and countersigned by said Registrar to said Transfer Agent.

RESOLVED that the Registrars be, and each of them hereby is, authorized and directed to register transfers from time to time of certificates for common stock *upon the cancellation* of certificates for a like number of shares of common stock signed by, or bearing the facsimile signatures of, the proper officers of this Company under its corporate seal or a facsimile thereof, as above provided, countersigned by either of the Transfer Agents and either of the Registrars and properly endorsed for transfer, and to register and countersign new certificates accordingly when they shall have been signed by, or shall bear the facsimile signatures of, the proper officers of this Company under its corporate seal or a facsimile thereof, as above provided, and countersigned by the Transfer Agent in the same city as the Registrar so countersigning, and that it is the intention and purpose of these resolutions that certificates for common stock shall be freely transferable in the cities of New York and
2404 Chicago and that the fact of the registration and countersignature of new certificates whether upon an original issue or upon a transfer shall be advised immediately by mail by the Registrar registering and countersigning the same to the other Registrar, and each Registrar shall be fully protected and held harmless by this Company by reason of its failure or refusal to countersign new certificates upon the transfer of any certificates countersigned by the other Registrar when it shall not have received such notice of the registry and countersignature of such certificate or certificates;

RESOLVED that either of said Registrars may, in its discretion, upon the written request of this Company, register and countersign a new certificate or certificates in lieu of any certificate or certificates which shall have become lost, stolen or destroyed, provided, however, that any such new certificate or certificates shall have been first duly signed by, or shall bear the facsimile signatures of the proper officers of this Company, under its corporate seal or a facsimile thereof,

as above provided, and countersigned by the Transfer Agent in the same city as the Registrar so signing;

RESOLVED that specimen signatures of the officers of this Company authorized to sign debentures and certificates for stock as aforesaid and specimen signatures of the officers of the Transfer Agents and Registrars authorized to sign for them, respectively, be lodged immediately with each of the Registrars to be used by them and each of them for purposes of comparison and that the Registrars and each of them be protected and held harmless in recognizing and acting upon any signature or in the case of an officer of this company, a facsimile thereof, or certificate believed in good faith to be genuine, and that when any officer of this Company or of any Transfer Agent or Registrar shall no longer be vested with authority to sign for this company or for such Transfer Agent or Registrar, as the case may be, written notice thereof shall be
2405 immediately given to each of the Registrars, and until receipt of such notice the Registrars shall be fully protected and held harmless in recognizing and acting upon certificates bearing the signature of such officer, or in the case of an officer of this Company, a facsimile of such signature or any signature believed by them or any of them to be a genuine signature.

RESOLVED that when either of the Registrars shall deem it expedient it may apply to any of the officers of this Company or to its own counsel for instructions or advice, and for its action in accordance with such instructions or advice, this company will fully protect and hold it harmless from any and all liability, and that neither of the Registrars shall be in any manner liable for any act or omission of the other Registrar.

RESOLVED, that the Transfer Agents and the Registrars may, each of them, employ agents or attorneys in fact and neither of them shall be answerable for the default or misconduct of any agent or attorney appointed by it in pursuance hereof, if such agent or attorney shall be selected with reasonable care, nor shall any Transfer Agent or Registrar be liable for anything whatsoever in connection with their agencies except each of them for its own wilful misconduct or gross negligence.

RESOLVED that the proper officers of this company be, and they hereby are, empowered and directed to

do any and all things deemed by them to be necessary, proper or advisable to effect the intents and purposes of the foregoing resolutions and that the President or a Vice-President or the Secretary or an Assistant Secretary of this company be, and each of them hereby is, authorized to certify these resolutions under the seal of this company, and to lodge the same with each of the Registrars together with a specimen debenture, specimen certificates for the preferred stock and the common stock, a certified copy of the Trust Indenture, when prepared, and certified copies of the Certificate of Incorporation and of the by-laws of this Company.

2406 The Chairman stated that it was desirable for the Board of Directors to appoint a Transfer Agent and a Registrar for the Preferred Stock of the Company.

Thereupon, on motion, duly made and seconded, the following resolutions were unanimously adopted:

RESOLVED that The Chemical National Bank of New York be, and it hereby is appointed agent of this Company with the title of "Transfer Agent" for the issuance and transfer of certificates, whether temporary or definitive, for 10,000 shares of 6% Cumulative Convertible Preferred Stock of the par value of $100 per share of this Company (hereinafter called Preferred Stock) and that The Public National Bank & Trust Company of New York be, and it hereby is, appointed agent of this Company with the title of "Registrar" for the registration of certificates, whether temporary or definitive, for said number of shares of preferred stock (the terms "Transfer Agent" and "Registrar" as hereinafter used, being intended to refer to the Transfer Agent or the Registrar, as the case may be, of the preferred stock);

RESOLVED that for the purpose of an original issue of certificates representing preferred stock the Transfer Agent is authorized and directed

(1) To record in its transfer record and to countersign as Transfer Agent, when signed by, or having affixed thereto the facsimile signatures of the President or a Vice-President and the Secretary or an Assistant Secretary or the Treasurer or an Assistant Treasurer of this Company, under the corporate seal of this Company or a facsimile thereof, an original issue of certificates for not exceeding

10,000 shares of preferred stock in such name or names and for such number of shares as this Company may direct in writing, signed by its President or Vice-President or its Secretary or its Treasurer and under the seal of this Company;

2407 (2) To deliver such certificates to the Registrar for registration and countersignature; and

(3) To deliver such certificates, when so countersigned by the Registrar, upon the written order of the President or a Vice-President or the Secretary or the Treasurer of this Company.

RESOLVED, that for the purpose of an original issue of certificates for preferred stock the Registrar is hereby directed

(1) To record in its register and to countersign as Registrar, when signed by, or having affixed thereto a facsimile signature of, the President or a Vice-President and the Secretary or an Assistant Secretary or the Treasurer or an Assistant Treasurer of this Company, under the seal of this Company or a facsimile thereof, an original issue of certificates for not exceeding 10,000 shares of preferred stock when delivered to it for that purpose by the Transfer Agent, after having been countersigned by it, and

(2) To redeliver such certificates when so registered and countersigned, to the Transfer Agent.

RESOLVED that the Transfer Agent be, and it hereby is, authorized and directed to make transfers from time to time upon its transfer records of such certificates for preferred stock as may be surrendered for transfer, properly endorsed, and duly stamped, as required by the laws of the State of New York and of the United States of America and signed by, or bearing facsimile signatures of the proper officers of this Company, as above provided, and countersigned by the Transfer Agent and the Registrar and to record on its transfer records and to countersign as Transfer Agent new certificates accordingly when they shall have been signed by, or have affixed thereto the facsimile signatures of, the proper officers of this Company, as above provided, and to deliver such certificates to the Re-

2408 gistrar for registration and countersignature and when so countersigned to deliver them to or upon the order of the holders of the certificates so surrendered for transfer;

RESOLVED that the Registrar be, and it hereby is, authorized and directed to register transfers from time to time of certificates for shares of preferred stock upon the cancelation of certificates for a like number of shares of preferred stock, signed by, or having affixed thereto the facsimile signatures of, the proper officers of this Company, under the seal of this Company or a facsimile thereof, as above provided, and countersigned by the Transfer Agent and the Registrar, and to record in its register and countersign as Registrar new certificates accordingly when they shall have been countersigned by the Transfer Agent and delivered by it to the Registrar for that purpose, and to redeliver such certificates to the Transfer Agent;

RESOLVED that specimen signatures of the officers of this Company authorized to sign certificates for shares of preferred stock be lodged forthwith with the Transfer Agent and the Registrar and specimen signatures of the officers of the Transfer Agent authorized to sign for the Transfer Agent be lodged forthwith with the Registrar, and specimen signatures of the officers of the Registrar authorized to sign for the Registrar be lodged forthwith with the Transfer Agent to be used by them for purposes of comparison, and that the Transfer Agent and the Registrar be, and each of them shall be protected and held harmless for recognizing and acting upon the signature of any such officers believed in good faith to be genuine or, in the case of officers of this Company, facsimiles of such signatures. When any officer of this Company, and in the case of the Transfer Agent, any officer of the Registrar, and in the case of the Registrar, any officer of the Transfer Agent, shall no longer be vested with authority to sign for this Company or the Transfer Agent or the Registrar, as the case may be, written notice thereof shall be immediately given to the Transfer Agent and Registrar and, until receipt of such notice, the Transfer Agent and Registrar shall be, each of them, fully protected and held harmless in recognizing and acting upon certificates bearing the signature of such officers or a
2409 signature believed in good faith to be such signature, or in the case of officers of this Company, facsimiles of such signatures;

RESOLVED, that when the Transfer Agent or Registrar shall deem it expedient, either of them may apply

to counsel of this Company or to their own counsel for instructions or advice, and for any action taken in accordance with such instructions or advice, this Company may and will fully protect and hold each of them harmless from any and all liability;

RESOLVED, that the Transfer Agent and the Registrar may, each of them, employ agents or attorneys in fact and neither of them shall be answerable for the default or misconduct of any agent or attorney appointed by it in pursuance hereof, if such agent or attorney shall be selected with reasonable care, nor shall the Transfer Agent or Registrar be liable for anything whatsoever in connection with their agencies except, in respect to each of them, for its own wilful misconduct or gross negligence;

RESOLVED, that in the event any certificate for preferred stock shall be lost, stolen or destroyed, before any new certificate or certificates shall be issued in lieu thereof a satisfactory bond shall be required in such amount as may be provided by the By-Laws of this Company and, in any event, not less than the value of such certificate and the shares represented thereby wherein the Transfer Agent shall be named as obligee and that such bond shall be in form satisfactory to the Transfer Agent;

RESOLVED, that the President or any Vice-President and the Secretary or an Assistant Secretary of this Company be, and they hereby are, authorized and directed to certify under the seal of this company copies of these resolutions relating to the Transfer Agent and the Registrar for the preferred stock of this Company and to lodge the same with the Transfer Agent and the Registrar, respectively, together with specimen certificates for the preferred stock in the forms duly
2410 adopted by this Company, specimen signatures of the officers of this Company authorized to sign certificates of stock and certified copies of Certificate of Incorporation and the By-Laws of this Company and to furnish both the Transfer Agent and the Registrar with certified copies of any amendments that may be made to such Certificate of Incorporation or By-laws from time to time.

The Chairman then stated that it was proposed for the Company to authorize the execution by The Transportation Management Corporation of employment contracts with Messrs. E. H. Miller and Morris Markin, respectively. He thereupon presented to the meeting drafts of proposed contracts, copies of which are as follows:

2411 AGREEMENT, dated the ..... day of April, 1929, between THE TRANSPORTATION MANAGEMENT CORPORATION, a corporation organized under the laws of the State of Delaware, (hereinafter referred to as the "Corporation"), party of the first part, and ERNEST H. MILLER, of the City of New York, party of the second part, (hereinafter referred to as "Mr. Miller").

WITNESSETH:

The Corporation is a subsidiary of Parmelee Transportation Company, a Delaware corporation. It is about to enter into agreements with The Parmelee Company, a Delaware corporation, the Yellow Cab Company, a Maine corporation and Yellow Taxi Corporation of New York, a New York corporation, for the management of said three companies, and expects to enter into agreements with other operating companies with reference to their management. Mr. Miller is President of Parmelee Transportation Company and of Yellow Taxi Corporation of New York. The Corporation is desirous of engaging the services of Mr. Miller as its President and General Manager for a period of two years, and Mr. Miller is prepared to act in such capacity.

NOW, THEREFORE, in consideration of the sum of One Dollar ($1) paid by the Corporation to Mr. Miller, and in consideration of the mutual covenants and agree-
2412 ments herein contained, the parties hereto agree as follows:

I. The Corporation hereby employs Mr. Miller as its General Manager for a period of two years, beginning May 1, 1929, and agrees to pay Mr. Miller as compensation for all services to be rendered by him pursuant to the terms of this agreement, the sum of Fifty Thousand Dollars ($50,000) per annum during said period, payable in twelve equal monthly installments on the last day of each month.

II. Mr. Miller agrees to accept said employment and agrees during said two year period to act as General Manager of the Corporation, as General Manager of Yellow Taxi Corporation of New York, and if and when re-elected as President of said two companies, or either of them, to continue to act as President of said two companies, or either of them. He further agrees to devote substantially all of his business time and his best efforts to the management of the Corporation and/or Parmelee Transportation Company and/or the companies with respect to which the Corporation shall, from time to time, have management contracts, and agrees to perform such other reasonable duties as the board of directors of the Corporation shall, from time to time, assign to him.

III. Mr. Miller agrees that during the period aforesaid he is to receive no compensation, in any capacity whatsoever (except director's fees), for any services rendered by him to Parmelee Transportation Company and/or Yellow Taxi Corporation of New York and/or from
2413 any other company or business with respect to which the Corporation shall have a management contract; it being understood that the compensation received by him from the Corporation shall be in full payment for all services rendered by him to the Corporation and/or Parmelee Transportation Company and/or their subsidiary or affiliated corporations or companies.

IV. Mr. Miller agrees that during the period aforesaid he will not engage in or be interested, directly or indirectly, in any business in competition with Parmelee Transportation Company, and/or the Corporation, and/or any company or business with respect to which the Corporation shall have a management contract, without the written consent of Parmelee Transportation Company or the Corporation, and that he will not permit his name to be used in connection with any business in competition with any of the companies aforesaid without like consent; provided, however, that nothing herein contained shall be construed to prevent Mr. Miller from being President and a director, for the time being, of Yellow Cab, Inc., of Newark, New Jersey.

V. The term of this agreement shall be for a period of two years from May 1, 1929.

VI. In the event of the decease or permanent disability of Mr. Miller, his compensation shall be prorated to the date of his decease or such permanent disability.

2414 VII. This agreement shall inure to the benefit of the parties hereto, their successors, legal representatives and assigns.

In Witness Whereof, the Corporation has caused these presents to be executed in its behalf by its duly authorized officers, and its corporate seal to be hereunto affixed, and Mr. Miller has hereunto set his hand and seal, in duplicate, as of the day and year first above written.

The Transportation Management Corporation

by .....
Vice-President

Attest:

.....
Secretary

..... (L. S.)

2415 AGREEMENT, dated the ..... day of April, 1929, between THE TRANSPORTATION MANAGEMENT CORPORATION, a corporation organized under the laws of the State of Delaware, party of the first part, (hereinafter referred to as the "Corporation"), and MORRIS MARKIN, of the City of New York, party of the second part, (hereinafter referred to as "Mr. Markin"),

WITNESSETH:

The Corporation is a subsidiary of Parmelee Transportation Company, a Delaware corporation. It is desirous of engaging the services of Mr. Markin in an advisory capacity, for a period of two years, and Mr. Markin is prepared to act in such capacity.

NOW, THEREFORE, in consideration of the sum of One Dollar ($1.00) paid by the Corporation to Mr. Markin, and in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

I. The Corporation hereby engages the services of Mr. Markin in an advisory capacity in connection with its business of managing companies operating taxicabs and other motor vehicles, such employment to be for a period of two years, beginning May 1, 1929. The Corporation agrees to pay Mr. Markin as compensation for such services the sum of Twenty-five Thousand Dollars ($25,000) per annum during said period, payable in equal monthly installments on the last day of each month.

2416 II. Mr. Markin agrees to act in an advisory capacity to the Corporation in its management of such companies operating taxicabs and other motor vehicles as it may manage during the period aforesaid; and he agrees from time to time to consult with Mr. Ernest H. Miller, President of the Corporation and of Parmelee Transportation Company, and with the other executive officers and directors of said two companies and of subsidiaries and affiliated companies of Parmelee Transportation Company. It is understood, however, that Mr. Markin's services shall be merely those of an expert to be consulted in an advisory capacity, and that there is no obligation on his part to devote any specified or substantial portion of his time in rendering the services aforesaid.

III. In the event of the decease or permanent disability of Mr. Markin, his compensation shall be pro rated to the date of his decease or such permanent disability.

IV. This agreement shall inure to the benefit of the parties hereto, their successors, legal representatives and assigns.

IN WITNESS WHEREOF, the Corporation has caused these presents to be executed in its behalf by its duly authorized officers, and its corporate seal to be hereunto affixed, and Mr. Markin has hereunto set his hand and seal, in duplicate, as of the day and year first above written.

2417

THE TRANSPORTATION MANAGEMENT CORPORATION

by .....
President

Attest:

.....
Secretary

..... (L. S.)

2418 After full discussion, upon motion duly made and seconded, the following resolutions were adopted (Mr. Miller not voting):

RESOLVED that the drafts of proposed employment contracts between The Transportation Management Corporation and Ernest H. Miller and Morris Markin, respectively, which have been submitted to this meeting be, and they hereby are, in all respects approved;

RESOLVED that this Company approves of the execution by The Transportation Management Corporation of contracts with Messrs. Ernest H. Miller and Morris Markin, respectively, in substantially the respective forms submitted to this meeting.

The Chairman then stated that it was proposed for the Company to execute option agreements with Messrs. Ernest H. Miller and Morris Markin, respectively, providing, among other things, for the granting by this Company to each of them, of an option to purchase 25,000 shares of the Common Stock of the Company at the price of $30 per share (subject to adjustment as provided in said option agreements) at any time prior to April 1, 1934, and otherwise upon the terms and subject to the conditions of said option agreements, as part of the consideration for the execution by them of the foregoing employment contracts. The Chairman thereupon submitted to the meeting drafts of proposed option agreements for use in this connection. Such drafts are as follows:

2419 AGREEMENT dated the 29th day of April, 1929, between PARMELEE TRANSPORTATION COMPANY, a Dela-

ware corporation, party of the first part (hereinafter called the Company), and ERNEST H. MILLER, of The City of New York, party of the second part (hereinafter called Mr. Miller).

As an inducement to Mr. Miller to enter into an employment agreement of even date herewith, with The Transportation Management Corporation, a Delaware corporation, and a wholly owned subsidiary of the Company, the Company is prepared to give or grant to Mr. Miller an option or options, to purchase 25,000 shares of common stock without par value of the Company (hereinafter called common stock), upon the terms of this agreement.

NOW, THEREFORE, in consideration of the premises and in order to carry out the obligation of the Company abovementioned the parties have agreed and hereby do agree as follows:

FIRST: The Company hereby gives and grants to Mr. Miller an irrevocable option to purchase at any time, or from time to time, on or before April 1, 1934, subject to the provisions of Article Third hereof, all or any part of 25,000 shares of common stock of the Company at the price of Thirty Dollars ($30) per share, which price shall be subject to adjustment as hereinafter stated.

When at any time, subject to the provisions of said Article Third, Mr. Miller shall elect to exercise his option hereunder, in whole or in part, he shall give written notice to the Company of such election, stating therein the number of shares to be purchased and the date on and after which delivery is desired. Delivery of and payment for such number of shares shall thereupon be made on the designated date, or such later date as the parties hereto shall agree upon, at the principal office of the Transfer Agent for the Common stock of the Company in the City of New York, or at such other place as the parties shall agree upon. Deliveries of shares in respect of which the option is exercised shall, if the common stock of the Company is listed on any stock exchange or exchanges, at the option of Mr. Miller, be subject to the listing of such shares on any such exchange or exchanges and the Company agrees to use its best efforts to list such shares, promptly, on any such exchange or exchanges.

SECOND: The option given or granted as in Article First hereof provided shall be subject to the following further terms and conditions:

(a) The option purchase price for common stock shall be thirty dollars ($30) per share; provided, however, that in case common stock in addition to the
2421 two hundred fifty thousand (250,000) shares presently to be issued and outstanding shall be issued at a price or prices which shall net the Company less than thirty dollars ($30) per share or as a stock dividend as hereinafter defined, then the option purchase price for such common stock shall, subject to the provisions hereinafter set forth, be determined in the following manner: The aggregate value of said two hundred fifty thousand (250,000) shares at the price of thirty dollars ($30) per share, plus the aggregate amount of money, if any, for which such additional common stock shall have been issued or sold, shall be divided by two hundred fifty thousand (250,000) increased by the number of such additional shares of common stock issued or sold and the quotient resulting from such division shall be the price per share at which common stock shall thereafter be issued on exercise of the option herein granted; provided that for the purposes of this sub-paragraph (a) shares of common stock issued as a stock dividend shall be treated as additional shares but shall not be deemed to have been issued for money or cash value; and provided further, that the excess number of shares of common stock at any time issued in exchange for shares of common stock theretofore issued over the number of shares thereof surrender-
2422 ed on any such exchange, shall be deemed to have been issued as a stock dividend, and if at any time the Company shall declare a cash dividend on any of its common stock and shall contemporaneously or substantially contemporaneously therewith give to the holders thereof the right to subscribe for additional common stock at a price which shall net the Company in the aggregate substantially the amount of such cash dividend so declared, such common stock so issued in respect of any such subscription shall be deemed to have been issued as a stock dividend; and provided further, also, that the option purchase price shall never exceed thirty dollars ($30) per share, and having at any time been reduced as in this sub-paragraph (a) provided, shall never thereafter be increased above such reduced option purchase price, notwith-

standing the subsequent issue of additional shares at a valuation or price exceeding such reduced option purchase price. The option purchase price shall not, however, be effected by the issue of common stock in pursuance of the conversion privilege conferred by the Company upon its 10,000 shares of 6% Cumulative Convertible Preferred Stock presently to be issued, or in pursuance of the conversion privilege which the Company intends to confer upon the $5,000,000. principal amount, of its debentures which are to be presently
2423 issued, or by the issue of common stock for labor done, personal property, real property or leases thereof.

(b) If common stock of the Company in addition to said two hundred fifty thousand (250,000) shares shall be issued (other than in pursuance of the conversion privileges specified in sub-paragraph (a) of this Article Second, or for labor done, personal property, real property or leases thereof) at a price or prices which shall net the Company less than thirty dollars ($30) per share or as a stock dividend (as above defined), a statement signed by its president or vice-president and by its secretary or treasurer, approved by some competent certified public or chartered accountant or accountants, shall be filed forthwith by the Corporation with its stock transfer agents, and each of them, showing the number of shares of common stock issued or sold in addition to said two hundred fifty thousand (250,000) shares, the price at which such issues or sales were made, and the option purchase price at which by reason thereof the common stock then remaining under option hereunder shall thereafter be issued upon the exercise of such option.

(c) If at any time prior to the expiration or complete exercise of the option, herein granted, the Com-
2424 pany shall be consolidated with, or merged into, any other corporation or shall sell all or substantially all, of its property and business as an entirety to another corporation or corporations, lawful provision shall be made as part of the terms of such consolidation, merger or sale that Mr. Miller shall thereafter be entitled, subject to the provisions of said Article Third, to purchase in lieu of each share of stock remaining under option but at the option price in effect at the

time of such consolidation, merger or sale, the same kind and amount of securities or assets as may be issuable, distributable or payable upon such consolidation, merger or sale with respect to each share of stock called for by the option. Lawful provision having been so made, from and after such consolidation, merger or sale, all rights of Mr. Miller shall cease and determine, except the right to purchase during the life of the option such securities or assets, as in this sub-paragraph (e) provided.

THIRD: The option herein granted shall not be exercised to any greater amount than 5,000 shares per year for the two years following May 1st, 1929, and, in the event that at any time prior to April 30th, 1931 Mr. Miller shall cease to remain in the employ of the Company, or shall die, the part of the option then unexercised shall lapse and become
2425 void. After April 30th, 1931, the restrictions set forth in this Article Third shall not apply.

FOURTH: The Company agrees at all times to reserve unissued a number of shares of its authorized common stock sufficient to satisfy the option rights conferred upon Mr. Miller by this agreement and to keep the transfer agent for said shares supplied with sufficient stock certificates to provide for all deliveries of stock that may be required hereunder.

FIFTH: All notices under this Agreement shall be put in writing and shall be sufficient in all respects if delivered in person or sent by registered mail to the party which is to receive the same, at No. 623 West 57th Street, New York, N. Y., in the case of Mr. Miller, and at the principal office of the Transfer Agent for the Company's common stock in the City of New York, in the case of the Company.

SIXTH: This agreement shall inure to the benefit of, and be binding upon, the parties hereto, their successors, legal representatives and assigns, and Mr. Miller may at any time after April 30th, 1931, but not prior thereto, assign or transfer to any third party or parties, individual or corporate, any or all of his rights hereunder and any such assignee may similarly, reassign the rights so assigned if authorized to do so by Mr. Miller.

SEVENTH: Whenever at any time or from time to time after April 30th, 1931, but not prior thereto, Mr. Miller shall so request, the Company will deliver to or upon
2426 his order, warrants in bearer or registered form and in such other form and in such denominations as he

shall request, issued under an agreement with a Trustee or Warrant Agent designated by Mr. Miller, which agreement shall contain such usual protective features as he shall request, for the purchase of shares of common stock not exceeding in the aggregate the number of shares then remaining under option hereunder for the period and at the price and subject generally to the terms and conditions herein set forth, subject to the additional condition, however, that the Company shall agree in such agreement, and hereby agrees, that upon the issue of any such warrants the Company shall list an additional number of shares of its common stock on all stock exchanges on which common stock of the Company shall then be listed, on official notice of issuance thereof, equal to the number of shares of common stock called for by such warrants.

IN WITNESS WHEREOF, the parties hereto have executed this agreement, in duplicate, the day and year first above written.

PARMELEE TRANSPORTATION COMPANY
~~by (Signed) Morrell W. Gaines~~
Vice-President
~~(Signed) Ernest H. Miller Jr. S.~~

2427 AGREEMENT dated the 29th day of April, 1929 between PARMELEE TRANSPORTATION COMPANY, a Delaware corporation, party of the first part (hereinafter called the Company), and MORRIS MARKIN, of The City of New York, party of the second part (hereinafter called Mr. Markin).

As an inducement to Mr. Markin to enter into an agreement, of even date herewith, with The Transportation management Corporation, a Delaware corporation, and a wholly owned subsidiary of the Company, whereby Mr. Markin will act in an advisory capacity in connection with the business of said The Transportation Management Corporation, the Company is prepared to give or grant to Mr. Markin an option or options, to purchase 25,000 shares of common stock without par value of the Company (hereinafter called common stock), upon the terms of this agreement.

NOW, THEREFORE, in consideration of the premises and in order to carry out the obligation of the Company abovementioned, the parties have agreed and hereby do agree as follows:

FIRST: The Company hereby gives and grants to Mr. Markin an irrevocable option to purchase at any time, or from time to time, on or before April 1, 1934, subject to the

provisions of Article Third hereof, all or any part of
25,000 shares of common stock of the Company at
2428 the price of Thirty Dollars ($30) per share, which
price shall be subject to adjustment as hereinafter
stated. ...

When at any time, subject to the provisions of said Article Third, Mr. Markin shall elect to exercise his option hereunder, in whole or in part, he shall give written notice to the Company of such election, stating therein the number of shares to be purchased and the date on and after which delivery is desired. Delivery of and payment for such number of shares shall thereupon be made on the designated date, or such later date as the parties hereto shall agree upon, at the principal office of the Transfer Agent for the common stock of the Company in the City of New York, or at such other place as the parties shall agree upon. Deliveries of shares in respect of which the option is exercised shall, if the common stock of the Company is listed on any stock exchange or exchanges, at the option of Mr. Markin, be subject to the listing of such shares on any such exchange or exchanges and the Company agrees to use its best efforts to list such shares, promptly, on any such exchange or exchanges.

SECOND: The option given or granted as in Article First hereof provided shall be subject to the following further terms and conditions:

(a) The option purchase price for common stock
2429 shall be thirty dollars ($30) per share; provided,
however, that in case common stock in addition to the two hundred fifty thousand (250,000) shares presently to be issued and outstanding shall be issued at a price or prices which shall net the Company less than thirty dollars ($30) per share or as a stock dividend as hereinafter defined, then the option purchase price for such common stock, shall, subject to the provisions hereinafter set forth, be determined in the following manner: The aggregate value of said two hundred fifty thousand (250,000) shares at the price of thirty dollars ($30) per share, plus the aggregate amount of money, if any, for which such additional common stock shall have been issued or sold, shall be divided by two hundred fifty thousand (250,000) increased by the number of such additional shares of common stock issued or sold and the quotient resulting from such division shall be the price per share at which common stock

shall thereafter be issued on exercise of the option herein granted; provided that for the purpose of this sub-paragraph (a) shares of common stock issued as a stock dividend shall be treated as additional shares but shall not be deemed to have been issued for money or cash value; and provided further, that the excess number of shares of common stock at any time issued in exchange for shares of common stock theretofore issued over the number of shares thereof surrendered on
2430 any such exchange, shall be deemed to have been issued as a stock dividend, and if at any time the Company shall declare a cash dividend on any of its common stock and shall contemporaneously or substantially contemporaneously therewith give to the holders thereof the right to subscribe for additional common stock at a price which shall net the Company in the aggregate substantially the amount of such cash dividends so declared, such common stock so issued in respect of any such subscription shall be deemed to have been issued as a stock dividend; and provided further, also, that the option purchase price shall never exceed thirty dollars ($30) per share and, having at any time been reduced as in this sub-paragraph (a) provided, shall never thereafter be increased above such reduced option purchase price, notwithstanding the subsequent issue of additional shares at a valuation or price exceeding such reduced option purchase price. The option purchase price shall not, however, be affected by the issue of common stock in pursuance of the conversion privilege conferred by the Company upon its 15,000 shares of 6% of Cumulative Convertible Preferred Stock presently to be issued, or in pursuance of the conversion privilege which the Company intends to confer upon the $5,000,000, principal amount, of its debentures which are to be presently issued,
2431 or by the issue of common stock for labor done, personal property, real property or leases thereof.

(b) If common stock of the Company in addition to said two hundred fifty thousand (250,000) shares shall be issued (other than in pursuance of the conversion privileges specified in sub-paragraph (a) of this Article Second, or for labor done, personal property, real property or leases thereof) at a price or prices which shall net the Company less than thirty dollars ($30) per share or as stock dividend (as above defined), a statement signed by its president or vice-president and

by its secretary or treasurer, approved by some competent certified public or chartered accountant or accountants, shall be filed forthwith by the Corporation with its stock transfer agents, and each of them, showing the number of shares of common stock issued or sold in addition to said two hundred fifty thousand (250,000) shares, the price at which such issues or sales were made, and the option purchase price, at which by reason thereof the common stock then remaining under option hereunder shall thereafter be issued upon the exercise of such option.

(c) If at any time prior to the expiration or complete exercise of the option herein granted, the company shall be consolidated with, or merged into
2432 any other corporation or shall sell all, or substantially all, of its property and business as an entirety to another corporation or corporations, lawful provision shall be made as part of the terms of such consolidation, merger or sale that Mr. Markin shall thereafter be entitled, subject to the provisions of said Article Third, to purchase in lieu of each share of stock remaining under option but at the option price in effect at the time of such consolidation, merger or sale, the same kind and amount of securities or assets as may be issuable, distributable or payable upon such consolidation, merger or sale with respect to each share of stock called for by the option. Lawful provision having been so made, from and after such consolidation, merger or sale, all rights of Mr. Markin shall cease and determine, except the right to purchase during the life of the option such securities or assets, as in this sub-paragraph (c) provided.

THIRD: The option herein granted shall not be exercised to any greater amount than 5,000 shares per year for the two years following May first, 1929; and, in the event that at any time prior to April 30th, 1931 Mr. Markin shall
2433 cease to render to The Transportation Management Corporation the services specified in said agreement, or shall die, the part of the option then unexercised shall lapse and become void. After April 30th, 1931, the restrictions set forth in this Article Third shall not apply.

FOURTH: The Company agrees at all times to reserve unissued a number of shares of its authorized common stock sufficient to satisfy the option rights conferred upon Mr. Markin by this agreement and to keep the transfer

agent for said shares supplied with sufficient stock certificates to provide for all deliveries of stock that may be required hereunder.

FIFTH: All notices under this agreement shall be put in writing and shall be sufficient in all respects if delivered in person or sent by registered mail to the party which is to receive the same, at the principal office of the Transfer Agent for the Company's common stock in the City of New York, in the case of the Company, and at No. 246 West 59th Street, New York, N. Y., in the case of Mr. Markin.

SIXTH: This agreement shall inure to the benefit of, and be binding upon, the parties hereto, their successors, legal representatives and assigns, and Mr. Markin may at any time after April 30th, 1931, but not prior thereto,
2434 assign or transfer to any third party or parties, individual or corporation, any or all of his rights hereunder and any such assignee may similarly reassign the rights so assigned if authorized to do so by Mr. Markin.

SEVENTH: Whenever at any time or from time to time after April 30th, 1931, but not prior thereto, Mr. Markin shall so request, the Company will deliver to or upon an order warrants in bearer or registered form and in such other form and in such denominations as he shall request, issued under an agreement with a Trustee or Warrant Agent designated by Mr. Markin, which agreement shall contain such usual protective features as he shall request, for the purchase of shares of common stock not exceeding in the aggregate the number of shares then remaining under option hereunder for the period and at the price and subject generally to the terms and conditions herein set forth, subject to the additional condition, however, that the Company shall agree in such agreement, and hereby agrees, that upon the issue of any such warrants the Company shall list an additional number of shares of its common stock on all stock exchanges on which common stock of the Company shall then be listed, on official notice of issuance thereof, equal to the number of shares of common stock called for by such warrants.

IN WITNESS WHEREOF, the parties hereto have exe-
2435 cuted this agreement, in duplicate, the day and year first above written.

PARMELEE TRANSPORTATION COMPANY,
by ~~(Signed) E. H. Miller~~
President
~~(Signed) M. Markin~~

2436 After discussion, upon motion duly made and seconded, the following resolutions were adopted (Mr. Miller not voting):

RESOLVED that the drafts of proposed option agreements between this Company and Ernest H. Miller and Morris Markin, respectively, which have been submitted to this meeting be, and they hereby are, in all respects approved;

RESOLVED that the proper officers of this Company be, and they hereby are, authorized and directed to execute and deliver, in the name and on behalf of this Company, option agreements with Ernest H. Miller and Morris Markin, respectively, in substantially the forms of said drafts;

RESOLVED that so long as the options granted by said option agreements are in effect there shall be reserved for said options out of the authorized and unissued stock of this Company such number of shares as may from time to time be subject to said options and that upon the exercise of said options, in whole or in part, the proper officers of this Company be, and they hereby are, authorized and directed to execute in the name and on behalf of this Company, and to deliver, the shares of stock of this Company as to which said option is exercised, against payment therefor and otherwise upon the terms and conditions of said option agreements.

The Chairman then submitted to the meeting drafts of proposed contracts to be executed between The Transportation Management Corporation and Yellow Cab Company (Maine), The Parmelee Company and Yellow Taxi Corporation, New York, respectively, copies of which are as follows:

2437 MEMORANDUM OF AGREEMENT made this 29th day of April, 1929, by and between YELLOW CAB COMPANY, a corporation organized and existing under the laws of the State of Maine, (hereinafter referred to as the "Corporation"), party of the first part, acting for itself and for each subsidiary now existing or hereafter acquired or organized of the Corporation or of Chicago Yellow Cab Company, Inc., a corporation organized and existing under the laws of the State of New York (which owns all of the capital stock of the Corporation, with the possible exception of qualifying shares), including Benzoline Motor Fuel Co., a corporation organized and existing under the laws of the

State of Illinois (the Corporation and such subsidiaries being hereinafter referred to collectively as the "Companies"), and THE TRANSPORTATION MANAGEMENT CORPORATION, a corporation organized and existing under the laws of the State of Delaware (hereinafter called the "Management Corporation"), party of the second part,

WITNESSETH:

In consideration of the mutual covenants herein contained, the parties hereto agree as follows:

2438 The Management Corporation will furnish to the Corporation and each of the Companies, its services, from time to time, in connection with the management, operation and development of the Corporation and each of the Companies and their properties, as follows:

I. The Management Corporation will place at the service of the Companies its combined experience, advice and assistance and will aid in the solution of such problems as may arise in connection with the conduct of the business of the Companies and the operation of their properties and equipment.

II. The Management Corporation will furnish the services of its Auditing Department and its operating experts to review the accounting operations and methods of the Companies, and to recommend improved or new methods, with a view to reducing the operating cost of the Companies. The books and records of the Companies, including all books of account and statistical records, shall at all times be open to examination and inspection by the Management Corporation and its representatives.

III. The Management Corporation will manage and supervise the purchasing departments of the Companies in the purchase of supplies, materials and equipment that may be authorized. The Management Corporation shall initiate and make recommendations to the executive officers and/or directors of the Companies concerning such pur-

2439 chases, and none of the Companies or their officers shall enter into any agreements or give any orders for any such purchases, for amounts involving more than $500., without submitting the same in advance to, and consulting with the Management Corporation with respect thereto, and either obtaining the approval of the Management Corporation or instructions from the Board of Directors of the particular Company for which such purchase is to be made.

IV. The Management Corporation will furnish the services of its statistical experts to analyze the financial and operating reports of the Companies and to compare the operations shown therein with those obtained by other companies, in order that any uneconomical operations may be ascertained, investigated and corrected.

V. The Management Corporation will furnish the services of its representatives in supervising the insurance necessary on the properties of the Companies.

VI. The Management Corporation will consult with and advise the executive officers of the Companies in promoting public relations and any modifications of existing fare schedules; and it will consult with and advise the executive officers and directors of the Companies concerning their finances and financial requirements.

VII. The Management Corporation will employ on behalf of the Companies, and will supervise the activities of, the departmental heads and superintendents of the
2440 Companies. It will also advise concerning the relations between the Companies and its employees (other than executive officers) and will assist in the selection of such employees and the fixing of the rates of compensation and wages to be paid to such employees. The Management Corporation shall have power to remove and discharge any employee of the Companies other than executive officers.

VIII. The Management Corporation shall advise and assist on any special technical problems arising in connection with any of the properties and equipment of the Companies, in instructing employees in the most economical method of operation, in the purchase and installation of new equipment, and shall supervise the preparation of specifications, contracts, purchase agreements, forms, certificates or other documents required in the purchase of equipment, supplies and materials.

IX. The Management Corporation shall supervise the advertising policy of the Companies; and it shall negotiate the making and renewal of leases on premises necessary or suitable to the business of the Companies. No officer or executive of any Company shall enter into any lease for the rental of premises without first consulting with the Management Corporation with respect thereto and either obtaining the approval of the Management Corporation or the approval of the directors of the Company for which such lease is to be made.

2441 X. The Companies, and their officers, executives and employees shall at all times consult, fully cooperate and advise with the Management Corporation and its officers and representatives concerning matters with respect to which the Management Corporation is employed under the terms of this agreement.

XI. All contracts and orders placed by the Management Corporation, at the request of the Companies, shall be in the name of the Corporation, or of any such subsidiary, as the case may be. The Management Corporation shall be considered as acting solely as agent and is to assume no pecuniary liability under or by reason of any such obligation.

XII. The Corporation, on behalf of itself and the Companies, hereby employs the Management Corporation for each and every of the purposes for which the Management Corporation agrees to render its services under the terms of this Agreement.

XIII. As compensation for the services to be rendered by the Management Corporation to the Companies herein, the Corporation agrees to pay or cause to be paid to the Management Corporation the following sums:

(1) The sum of $50,000, per annum, payable in equal monthly installments, beginning from the date of this agreement.

2442 (2) For each year during the term of this agreement, including the calendar year 1929, a sum equal to 10% of the consolidated net earnings of the Companies (determined as hereinafter provided) in excess of the sum of $1,600,000 and in addition thereto a sum equal to 2½% of such net earnings (determined in like manner) in excess of the sum of $2,000,000. Such net earnings (meaning thereby the surplus available for dividends on the stock of the Companies) shall be determined by the accountants of the Corporation regularly employed by it, who shall be a nationally known firm of public accountants of reputable standing, in accordance with the customary accounting practice of the Companies, except that (a) the depreciation charges of taxicabs shall, for the purpose of computing such net earnings, be taken to be 1½¢ per mile of actual operation (provided, however, that if at any future time during the term of this agreement such amount per mile shall be found to be insufficient with

respect to future operations, then any increased amount shall be fixed by the Board of Directors of the Corporation and the Board of Directors of the Management Corporation) and (b) that in the event that the Corporation shall during the term of this agreement procure additional working capital through the sale of securities, there shall be deducted as an ex-
2443 pense of the business a sum equal to 10% of the net proceeds of such financing, beginning with the date that the Company shall have the benefit and use of such additional working capital. In case the two boards of directors cannot agree as to whether the rate of depreciation should be more than 1½ cents, the difference shall be submitted to J. A. Sisto & Co. as arbitrator, whose judgment shall be final, provided, that in the case of present existing equipment any such excess over 1½ cents shall for the purpose of this contract be charged against surplus and not against net earnings. For the purpose of computing the net earnings upon which such percentage compensation shall be based, there shall be deducted all proper reserves for taxes, including federal taxes, and depreciation, but no allowance for depreciation for any period prior to the year 1929; and no gains derived from the purchase and sale of capital assets or from investments or the purchase and sale or transfer of leaseholds shall be included as earnings, and no losses from similar sources shall be included as expenses or deductions in the computation of such percentage compensation. The fixed compensation referred to in
2444 paragraph (1) above shall be deducted as an expense for the purpose of this computation, but the percentage compensation referred to in this paragraph (2) shall not be deducted for such purpose. The amount of such percentage compensation, determined in accordance with this paragraph, shall be paid to the Management Corporation as soon as the certified audit is completed and not later than March first in the year immediately following the year for which such compensation is payable.

XIV. No officer or employee of the Management Corporation shall receive any salary or compensation from any of the Companies; and all salaries and expenses of

the officers and employees of the Management Corporation shall be paid by it.

XV. The Management Corporation will at all times have and maintain a sufficient number of executives, employees and experts to render the services provided for by the terms of this agreement; and Ernest H. Miller, so long as he shall be the President of the Management Corporation, except in the event of his physical incapacity, and the other employees of the Management Corporation shall devote sufficient of their time in the City of Chicago, to
2445 render such services.

XVI. The term of this agreement shall be from the date hereof to December 31, 1930, inclusive.

XVII. All services to be rendered by the Management Corporation under this agreement shall be subject to the direction and control by the Board or Boards of Directors of the Corporation, and/or one or more of the Companies for which such services are to be rendered.

XVIII. This agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns, but neither this agreement nor any of its rights hereunder shall be assignable by the Management Corporation without the written consent of the Corporation first had.

In Witness Whereof, the parties hereto have caused this agreement to be executed by their proper officers and their respective seals to be attached hereto as of the day and year first above written.

Yellow Cab Company
by ~~Thos. B. Hogan~~
Vice-President

(Corporate Seal)

Attest:
~~Edward N. D'Ancona~~
Secretary.

The Transportation Management Corporation
By ~~E. H. Miller,~~
President

Attest:
~~J. F. McMahon~~
Ass't. Secretary (Corporate Seal)

2446 The undersigned Chicago Yellow Cab Company, Inc., a corporation organized and existing under the

laws of the State of New York, hereby approves and consents to the foregoing agreement.

CHICAGO YELLOW CAB COMPANY, INC.
by ~~S. H. Kramer~~
Vice-President

(Corporate Seal)

Attest:
~~Edward N. D'Ancona~~
Secretary

2447 MEMORANDUM OF AGREEMENT made this 29th day of April, 1929, by and between THE PARMELEE COMPANY, a corporation organized and existing under the laws of the State of Delaware, (hereinafter referred to as the "Corporation"), party of the first part, acting for itself and for each subsidiary now existing or hereafter acquired or organized of the Corporation (the Corporation and such subsidiaries being hereinafter referred to collectively as the "Companies"), and THE TRANSPORTATION MANAGEMENT CORPORATION, a corporation organized and existing under the laws of the State of Delaware (hereinafter called the "Management Corporation"), party of the second part,

WITNESSETH:

In consideration of the mutual covenants herein contained, the parties hereto agree as follows:

The Management Corporation will furnish to the Corporation and each of the Companies, its services, from time to time, in connection with the management, operation and development of the Corporation and each of the Companies and their properties, as follows:

2448 I. The Management Corporation will place at the service of the Companies its combined experience, advice and assistance and will aid in the solution of such problems as may arise in connection with the conduct of the business of the Companies and the operation of their properties and equipment.

II. The Management Corporation will furnish the services of its Auditing Department and its operating experts to review the accounting operations and method of the Companies, and to recommend improved or new methods, with a view to reducing the operating cost of the Companies. The books and records of the Companies, including all books of account and statistical records, shall at all times be open to examination and inspection by the Management Corporation and its representatives.

III. The Management Corporation will manage and supervise the purchasing departments of the Companies in the purchase of supplies materials and equipment that may be authorized. The Management Corporation shall initiate and make recommendations to the executive officers and/or directors of the Companies concerning such purchases, and none of the Companies or their officers shall enter into any agreements or give any orders for any such purchases, for amounts involving more than $500,
2449 without submitting the same in advance to, and consulting with the Management Corporation with respect thereto, and either obtaining the approval of the Management Corporation or instructions from the Board of Directors of the particular Company for which such purchase is to be made.

IV. The Management Corporation will furnish the services of its statistical experts to analyze the financial and operating reports of the Companies and to compare the operations shown therein with those obtained by other companies, in order that any uneconomical operations may be ascertained, investigated and corrected.

V. The Management Corporation will furnish the services of its representatives in supervising the insurance necessary on the properties of the Companies.

VI. The Management Corporation will consult with and advise the executive officers of the Companies in promoting public relations and any modifications of existing fare schedules; and it will consult with and advise the executive officers and directors of the Companies concerning their finances and financial requirements.

VII. The Management Corporation will employ on behalf of the Companies, and will supervise the activities of, the departmental heads and superintendents of the Companies. It will also advise concerning the relations between the Companies and its employees (other than
2450 executive officers) and will assist in the selection of such employees and the fixing of the rates of compensation and wages to be paid to such employees. The Management Corporation shall have power to remove and discharge any employees of the Companies other than executive officers.

VIII. The Management Corporation shall advise and assist on any special technical problems arising in connection with any of the properties and equipment of the Companies, in instructing employees in the most economical

method of operation, in the purchase and installation of new equipment, and shall supervise the preparation of specifications, contracts, purchase agreements, forms, certificates or other documents required in the purchase of equipment, supplies and materials.

IX. The Management Corporation shall supervise the advertising policy of the Companies; and it shall negotiate the making and renewal of leases on premises necessary or suitable to the business of the Companies. No officer or executive of any Company shall enter into any lease for the rental of premises without first consulting with the Management Corporation with respect thereto and either obtaining the approval of the Management Corporation or the approval of the directors of the Company for which such lease is to be made.

X. The Companies, and their officers, executives
2451 and employees shall at all times consult, fully cooperate and advise with the Management Corporation and its officers and representatives concerning matters with respect to which the Management Corporation is employed under the terms of this agreement.

XI. All contracts and orders placed by the Management Corporation, at the request of the Companies, shall be in the name of the Corporation, or of any such subsidiary, as the case may be. The Management Corporation shall be considered as acting solely as agent and is to assume no pecuniary liability under or by reason of any such obligation.

XII. The Corporation, on behalf of itself and the Companies, hereby employs the Management Corporation for each and every of the purposes for which the Management Corporation agrees to render its services under the terms of this agreement.

XIII. As compensation for the services to be rendered by the Management Corporation to the Companies, herein, the Corporation agrees to pay or cause to be paid to the Management Corporation the sum of $25,000 per annum, payable in equal monthly installments, beginning from the date of this agreement.

XIV. No officer or employee of the Management Corporation shall receive any salary or compensation
2452 from any of the Companies; and all salaries and expenses of the officers and employees of the Management Corporation shall be paid by it.

XV. The Management Corporation will at all times have and maintain a sufficient number of executives, employees and experts to render the services provided for by the terms of this agreement; and Ernest H. Miller, so long as he shall be the President of the Management Corporation, except in the event of his physical incapacity, and the other employees of the Management Corporation shall devote sufficient of their time in the City of Chicago, to render such services.

XVI. The term of this agreement shall be from the date hereof to December 31, 1930, inclusive.

XVII. All services to be rendered by the Management Corporation under this agreement shall be subject to the direction and control by the Board or Boards of Directors of the Corporation, and or one or more of the Companies for which such services are to be rendered.

XVIII. This agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns, but neither this agreement nor any of its rights hereunder shall be assignable by the Management Corporation without the written consent of the Corporation first had.

IN WITNESS WHEREOF, the parties hereto have caus-
2453 ed this agreement to be executed by their proper officers and their respective seals to be attached hereto as of the day and year first above written.

THE PARMELEE COMPANY
by ~~Charles A. McCulloch~~
President.

Attest:
~~P. R. Crowley~~
Secretary

(Corporate Seal)

THE TRANSPORTATION MANAGEMENT CORPORATION
by ~~E. H. Miller~~
President

Attest:
~~J. F. McMahon~~ (Corporate Seal)
Asst. Secretary

2454 MEMORANDUM OF AGREEMENT made this 29th day of April, 1929, by and between YELLOW TAXI CORPORATION, NEW YORK, a corporation organized and existing under the laws of the State of New York, (hereinafter referred to as the "Corporation"), party of the first part, acting for itself and for each subsidiary now existing or

hereafter acquired or organized of the Corporation (the Corporation and such subsidiaries being hereinafter referred to collectively as the "Companies"), and THE TRANSPORATION MANAGEMENT CORPORATION, a corporation organized and existing under the laws of the State of Delaware (hereinafter called the "Management Corporation"), party of the second part,

WITNESSETH:

The Management Corporation has been organized for the purpose, among other things, of engaging in the business of assisting in the management of motor transportation companies. It expects to receive compensation from companies to which it renders such assistance. Parmelee Transportation Company, a Delaware corporation, owns all of the capital stock of the Management Corporation. Parmelee Transportation Company expects that it or a sales company controlled by it will receive commissions from manufacturers of cabs and other motor vehicles, including Checker Cab Manufacturing Corporation,
2455 who sell or may sell their products to the Corporation.

In consideration of the mutual covenants herein contained, the parties hereto agree as follows:

The Management Corporation will furnish to the Corporation and each of the Companies, its services, from time to time, in connection with the management, operation and development of the Corporation and each of the Companies and their properties, as follows:

I. The Management Corporation will place at the service of the Companies its combined experience, advice and assistance and will aid in the solution of such problems as may arise in connection with the conduct of the business of the Companies and the operation of their properties and equipment.

II. The Management Corporation will furnish the services of its Auditing Department and its operating experts to review the accounting operations and methods of the Companies, and to recommend improved or new methods, with a view to reducing the operating cost of the Companies. The books and records of the Companies, including all books of account and statistical records, shall at all times be open to examination and inspection by the Management Corporation and its representatives.

III. The Management Corporation will manage
2456 and supervise the purchasing departments of the Companies in the purchase of supplies, materials

and equipment that may be authorized. The Management Corporation shall initiate and make recommendations to the executive officers and/or directors of the Companies concerning such purchases, and none of the Companies or their officers shall enter into any agreements or give any orders for any such purchases, for amounts involving more than $500., without submitting the same in advance to, and consulting with the Management Corporation with respect thereto, and either obtaining the approval of the Management Corporation or instructions from the Board of Directors of the particular Company for which such purchase is to be made.

IV. The Management Corporation will furnish the services of its statistical experts to analyze the financial and operating reports of the Companies and to compare the operations shown therein with those obtained by other companies, in order that any uneconomical operations may be ascertained, investigated and corrected.

V. The Management Corporation will furnish the services of its representatives in supervising the insurance necessary on the properties of the Companies.

VI. The Management Corporation will consult with and advise the executive officers of the Companies in
2457 promoting public relations and any modifications of existing fare schedules; and it will consult with and advise the executive officers and directors of the Companies concerning its finances and financial requirements.

VII. The Management Corporation will employ on behalf of the Companies, and will supervise the activities of, the departmental heads and superintendents of the Companies. It will also advise concerning the relations between the Companies and its employees (other than executive officers) and will assist in the selection of such employees and the fixing of the rates of compensation and wages to be paid to such employees. The Management Corporation shall have power to remove and discharge any employees of the Companies other than executive officers.

VIII. The Management Corporation shall advise and assist on any special technical problems arising in connection with any of the properties and equipment of the Companies, in instructing employees in the most economical method of operation, in the purchase and installation of new equipment, and shall supervise the preparation of specifications, contracts, purchase agreements, forms, certificates or other documents required in the purchase of equipment, supplies and materials.

IX. The Management Corporation shall supervise the advertising policy of the Companies; and it shall
2458 negotiate the making and renewal of leases on premises necessary or suitable to the business of the Companies. No officer or executive of any Company shall enter into any lease for the rental of premises without first consulting with the Management Corporation with respect thereto and either obtaining the approval of the Management Corporation or the approval of the directors of the Company for which such lease is to be made.

X. The Companies and their officers, executives and employees shall at all times consult, fully cooperate and advise with the Management Corporation and its officers and representatives concerning matters with respect to which the Management Corporation is employed under the terms of this agreement.

XI. All contracts and orders placed by the Management Corporation, at the request of the Companies, shall be in the name of the Corporation, or of any such subsidiary, as the case may be. The Management Corporation shall be considered as acting solely as agent and is to assume no pecuniary liability under or by reason of any such obligation.

XII. The Corporation, on behalf of itself and the Companies, hereby employs the Management Corporation for each and every of the purposes for which the Management Corporation agrees to render its services under the terms of this Agreement.

2459 XIII. As compensation for the services to be rendered by the Management Corporation to the Companies herein, the Corporation agrees to pay or cause to be paid to the Management Corporation the following sums:

(1) The sum of $50,000. per annum, payable in equal monthly installments, beginning from the date of this agreement.

(2) For each year during the term of this agreement, including the calendar year 1929, a sum equal to 10% of the consolidated net earnings of the Companies (determined as hereinafter provided) in excess of the sum of $550,000, and in addition thereto a sum equal to 2½% of such net earnings (determined in like manner) in excess of the sum of $700,000. Such net earnings (meaning thereby the surplus available for dividends on the stock of the Companies) shall be determined by the accountants of the Corporation regularly employed by it, who shall be a nationally known firm

of public accountants of reputable standing, in accordance with the customary accounting practice of the Companies, except that (a) the depreciation charges of the taxicabs shall, for the purpose of computing such net earnings, be taken to be 1½¢ per
2460 mile of actual operation (provided, however, that if at any future time during the term of this agreement such amount per mile shall be found to be insufficient with respect to future operations, then any increased amount shall be fixed by the Board of Directors of the Corporation and the Board of Directors of the Management Corporation) and (b) that in the event that the Corporation shall during the term of this agreement procure additional working capital through the sale of securities, there shall be deducted as an expense of the business a sum equal to 10% of the net proceeds of such financing, beginning with the date that the Company shall have the benefit and use of such additional working capital. In case the two boards of directors cannot agree as to whether the rate of depreciation should be more than 1½ cents, the difference shall be submitted to J. A. Sisto & Co. as arbitrator, whose judgment shall be final, provided that in the case of present existing equipment any such excess over 1½ cents shall for the purpose of this contract be charged against surplus and not against net earnings. For the purpose of computing the net
2461 earnings upon which such percentage compensation shall be based, there shall be deducted all proper reserves for taxes, including federal taxes, and depreciation, but no allowance for depreciation for any period prior to the year 1929; and no gains derived from the purchase and sale of capital assets or from investments or the purchase and sale or transfer of leaseholds shall be included as earnings, and no losses from similar sources shall be included as expenses or deductions in the computation of such percentage compensation. The fixed compensation referred to in paragraph (1) above shall be deducted as an expense for the purpose of this computation, but the percentage compensation referred to in this paragraph (2) shall not be deducted for such purpose. The amount of such percentage compensation, determined in accordance with this paragraph, shall be paid to the Management Corporation as soon as the certified audit is completed and not later than March first in the year im-

mediately following the year for which such compensation is payable.

XIV. No officer or employee of the Management
2462 Corporation shall receive any salary or compensation from any of the Companies; and all salaries and expenses of the officers and employees of the Management Corporation shall be paid by it.

XV. The Management Corporation will at all times have and maintain a sufficient number of executives, employees and experts to render the services provided for by the terms of this agreement; and Ernest H. Miller, so long as he shall be the President of the Management Corporation, except in the event of his physical incapacity, and the other employees of the Management Corporation shall devote sufficient of their time in the City of New York, to render such services.

XVI. The terms of this agreement shall be from the date hereof to December 31, 1930, inclusive.

XVII. All services to be rendered by the Management Corporation under this agreement shall be subject to the direction and control of the Board or Boards of Directors of the Corporation, and/or one or more of the Companies for which such services are to be rendered.

XVIII. This agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns, but neither this agreement nor any of its rights hereunder shall be assignable by the Management
2463 Corporation without the written consent of the Corporation first had.

In Witness Whereof, the parties hereto have caused this agreement to be executed by their proper officers and their respective seals to be attached hereto as of the day and year first above written.

Yellow Taxi Corporation, New York,
By ~~(Signed) C. A. Sinnett~~
President
[Corporate Seal]

Attest:
~~(Signed) E. A. Dannemann~~
Secretary

The Transportation Management Corporation
By ~~(Signed) E. H. Miller~~
President
[Corporate Seal]

Attest:
~~(Signed) J. L. McMahon~~
Asst. Secretary

2464 After full discussion, upon motion duly made and seconded, the following resolutions were unanimously adopted:

RESOLVED that the drafts of proposed management contracts between The Transportation Management Corporation and Yellow Cab Company (Maine), The Parmelee Company and Yellow Taxi Corporation, New York, respectively, which have been submitted to this meeting be, and they hereby are, in all respects approved;

RESOLVED that this Company approves of the execution by The Transportation Management Corporation of contracts with Yellow Cab Company (Maine), The Parmelee Company and Yellow Taxi Corporation, New York, respectively, in substantially the forms of the respective drafts of contracts submitted to this meeting.

The Chairman then stated that as there were further matters to come before the Board within a few days it was desirable to adjourn the meeting.

Thereupon, on motion duly made and seconded, the following resolution was unanimously adopted:

RESOLVED that this meeting be, and it hereby is, adjourned to reconvene at the same place at 10 o'clock in the forenoon on April 26, 1929.

ERNEST H. MILLER
Chairman of the Meeting

F. L. HAVERON
Secretary of the Meeting

2465 *Gov. Ex. 9*

AGREEMENT dated as of the first day of May, 1931, between THE TRANSPORTATION MANAGEMENT CORPORATION, a corporation organized under the laws of the State of Delaware, party of the first part (hereinafter referred to as the "Corporation"), and MORRIS MARKIN, of the City of New York, party of the second part (hereinafter referred to as "Mr. Markin"),

WITNESSETH:

The Corporation is a subsidiary of Parmelee Transportation Company, a Delaware corporation. The Corporation has an existing contract terminating on April 30, 1931, with Mr. Markin, engaging the services of Mr. Markin in an advisory capacity, and the Corporation and Mr. Markin are desirous of renewing such contract for an additional period of two years.

Now, Therefore, in consideration of the sum of One Dollar ($1.00) paid by the Corporation to Mr. Markin, and in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

I. The Corporation hereby engages the services of Mr. Markin in an advisory capacity in connection with its business of managing companies operating taxicabs and other motor vehicles, such employment to be for a period of two years, beginning May 1, 1931. The Corporation agrees to pay Mr. Markin as compensation for such services the sum of Twenty-five Thousand Dollars ($25,000) per annum during said period, payable in equal monthly instal-
2466 ments on the last day of each month.

II. Mr. Markin agrees to act in an advisory capacity to the Corporation in its management of such companies operating taxicabs and other motor vehicles as it may manage during the period aforesaid; and he agrees from time to time to consult with Mr. Ernest H. Miller, President of the Corporation and of Parmelee Transportation Company, and with the other executive officers and directors of said two companies and of subsidiaries and affiliated companies of Parmelee Transportation Company. It is understood, however, that Mr. Markin's services shall be merely those of an expert to be consulted in an advisory capacity, and that there is no obligation on his part to devote any specified or substantial portion of his time in rendering the services aforesaid.

III. In the event of the decease or permanent disability of Mr. Markin, his compensation shall be pro rated to the date of his decease or such permanent disability.

IV. This agreement shall inure to the benefit of the parties hereto, their successors, legal representatives and assigns, and be binding upon the successors and assigns of the Corporation.

In Witness Whereof, the Corporation has caused this Agreement to be executed in duplicate in its behalf by its duly authorized officers, and its corporate seal to be hereunto affixed, and Mr. Markin has hereunto set his
2467 hand and seal as of the day and year first above written.

The Transportation Management Corporation
By Levin Rank *V. P.* (Seal)

Attest:
R. J. Wyatt
Secretary

M. Markin (L. S.)

MEMORANDUM OF AGREEMENT made this 8th day of May 1930, by and between YELLOW CAB COMPANY, a corporation organized and existing under the laws of the State of Maine, (hereinafter referred to as the "Corporation"), party of the first part, acting for itself and for each subsidiary now existing or hereafter acquired or organized of the Corporation or of Chicago Yellow Cab Company, Inc., a corporation organized and existing under the laws of the State of New York (which owns all of the capital stock of the Corporation, with the possible exception of qualifying shares), including Benzoline Motor Fuel Co., a corporation organized and existing under the laws of the State of Illinois, (the Corporation and such subsidiaries being hereinafter referred to collectively as the "Companies"), and THE TRANSPORTATION MANAGEMENT CORPORATION, a corporation organized and existing under the laws of the State of Delaware (hereinafter called the "Management Corporation"), party of the second part,

WITNESSETH:

The Management Corporation has been organized for the purpose, among other things, of engaging in the business of assisting in the management of motor transportation companies. It expects to receive compensation
2469 from companies to which it renders such assistance.

Parmelee Transportation Company, a Delaware corporation, owns all of the capital stock of the Management Corporation. Parmelee Transportation Company expects that it, or a sales company controlled by it will receive commissions from manufacturers of cabs and other motor vehicles, including Checker Cab Manufacturing Corporation, who sell or may sell their products to the Corporation.

In consideration of the mutual covenants herein contained, the parties hereto agree as follows:

The Management Corporation will furnish to the Corporation and each of the Companies, its services, from time to time, in connection with the management, operation and development of the Corporation and each of the Companies and their properties, as follows:

I. The Management Corporation will place at the service of the Companies its combined experience, advice and assistance and will aid in the solution of such problems as may arise in connection with the conduct of the business

of the Companies and the operation of their properties and equipment.

II. The Management Corporation will furnish the services of its Auditing Department and its operating
2470 experts to review the accounting operations and methods of the Companies, and to recommend improved or new methods, with a view to reducing the operating cost of the Companies. The books and records of the Companies, including all books of account and statistical records, shall at all times be open to examination and inspection by the Management Corporation and its representatives.

III. The Management Corporation will manage and supervise the purchasing departments of the Companies in the purchase of supplies, materials and equipment that may be authorized. The Management Corporation shall initiate and make recommendations to the executive officers and/or directors of the Companies concerning such purchases, and none of the Companies or their officers shall enter into any agreements or give any orders for any such purchases, for amounts involving more than $500., without submitting the same in advance to, and consulting with the Management Corporation with respect thereto, and either obtaining the approval of the Management Corporation or instructions from the Board of Directors of the particular Company for which such purchase is to be made.

IV. The Management Corporation will furnish the services of its statistical experts to analyze the finan-
2471 cial and operating reports of the Companies and to compare the operations shown therein with those obtained by other companies, in order that any uneconomical operations may be ascertained, investigated and corrected.

V. The Management Corporation will furnish the services of its representatives in supervising the insurance necessary on the properties of the Companies.

VI. The Management Corporation will consult with and advise the executive officers of the Company in promoting public relations and any modifications of existing fare schedules; and it will consult with and advise the executive officers and directors of the company concerning its finances and financial requirements.

VII. The Management Corporation will employ on behalf of the Companies, and will supervise the activities of the departmental heads and superintendents of the

Companies. It will also advise concerning the relations between the Companies and its employees (other than executive officers) and will assist in the selection of such employees and the fixing of the rates of compensation and wages to be paid to such employees. The Management Corporation shall have power to remove and discharge any employees of the Companies other than executive officers.

2472 VIII. The Management Corporation shall advise and assist on any special technical problems arising in connection with any of the properties and equipment of the Companies, in instructing employees in the most economical method of operation, in the purchase and installation of new equipment, and shall supervise the preparation of specifications, contracts, purchase agreements, forms, certificates or other documents required in the purchase of equipment, supplies and materials.

IX. The Management Corporation shall supervise the advertising policy of the Companies; and it shall negotiate the making and renewal of leases on premises necessary or suitable to the business of the Companies. No officer or executive of any Company shall enter into any lease for the rental of premises without first consulting with the Management Corporation with respect thereto and either obtaining the approval of the Management Corporation or the approval of the directors of the Company for which such lease is to be made.

X. The Companies, and their officers, executives and employees shall at all times consult, fully cooperate and advise with the Management Corporation and its officers and representatives concerning matters with respect to which the Management Corporation is employed under the terms of this agreement.

XI. All contracts and orders placed by the Management Corporation, at the request of the Companies, shall be in the name of the Corporation, or of any such subsidiary, as the case may be. The Management Corporation shall be considered as acting solely as agent and is to assume no pecuniary liability under or by reason of any such obligation.

2473 XII. The Corporation, on behalf of itself and the Companies, hereby employs the Management Corporation for each and every of the purposes for which the Management Corporation agrees to render its services under the terms of this agreement.

XIII. As compensation for the services to be rendered by the Management Corporation to the Companies herein, the Corporation agrees to pay or cause to be paid to the Management Corporation the following sums:

(1) The sum of Fifty thousand dollars ($50,000) per annum, payable in equal monthly installments beginning from the date of this agreement until December 31, 1930, and the sum of Seventy-five thousand dollars ($75,000) per annum, payable in equal monthly installments from January 1, 1931, to December 31, 1931.

(2) For each year during the term of this agreement, including the calendar year 1930, a sum equal to 10% of the consolidated net earnings of the Companies (determined as hereinafter provided) in excess of the sum of $1,600,000, and in addition thereto a sum equal to 2½% of such net earnings (determined in like manner) in excess of the sum of $2,000,000. Such net earnings (meaning thereby the surplus available for dividends on the stock of the Companies) shall be determined by the accountants of the Corporation regularly employed by it, who shall be a nationally known firm of pub-
2474 lic accountants of reputable standing, in accordance with the customary accounting practice of the Companies, except that (a) the depreciation charges of taxicabs shall, for the purpose of computing such net earnings, be taken to be 1½¢ per mile of actual operation (provided, however, that if at any future time during the term of this agreement such amount per mile shall be found to be insufficient with respect to future operations, then any increased amount shall be fixed by the Board of Directors of the Corporation and the Board of Directors of the Management Corporation) and (b) that in the event that the Corporation shall during the term of this agreement procure additional working capital through the sale of securities there shall be deducted as an expense of the business a sum equal to 10% of the net proceeds of such financing, beginning with the date that the Company shall have the benefit and use of such additional working capital. In case the two Boards of Directors cannot agree as to whether the rate of depreciation should be more than 1½%, the difference shall be submitted to J. A. Sisto & Co. as arbitrator, whose judgment shall be final, provided that in the case of present existing

equipment any such excess over 1½¢ shall for the purpose of this contract be charged against surplus and
2475 not against net earnings. For the purpose of computing the net earnings upon which such percentage compensation shall be based, there shall be deducted all proper reserves for taxes, including federal taxes, and depreciation, but no allowance for depreciation for any period prior to the year 1929; and no gains derived from the purchase and sale of capital assets or from investments or the purchase and sale or transfer of leaseholds shall be included as earnings, and no losses from similar sources shall be included as expenses or deductions in the computation of such percentage compensation. The fixed compensation referred to in paragraph (1) above shall be deducted as an expense for the purpose of this computation, but the percentage compensation referred to in this paragraph (2) shall not be deducted for such purpose. The amount of such percentage compensation, determined in accordance with this paragraph, shall be paid to the Management Corporation as soon as the certified audit is completed and not later than March first in the year immediately following the year for which such compensation is payable.

XIV. No officer or employee of the Management Corporation shall receive any salary or compensation from any of the Companies; and all salaries and expenses of the officers and employees of the Management Corporation shall be paid by it.

2476 XV. The Management Corporation will at all times, have and maintain a sufficient number of executives, employees and experts to render the services provided for by the terms of this agreement; and Ernest H. Miller, so long as he shall be the President of the Management Corporation, except in the event of his physical incapacity, and the other employees of the Management Corporation, shall devote sufficient of their time in the City of Chicago, to render such services.

XVI. The terms of this agreement shall be from the date hereof to December 31, 1931, inclusive.

XVII. All services to be rendered by the Management Corporation under this agreement shall be subject to the direction and control by the Board or Boards of Directors of the Company, and/or one or more of the Companies for which such services are to be rendered.

XVIII. This agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns, but neither this agreement nor any of its rights hereunder shall be assignable by the Management Corporation without the written consent of the Corporation first had.

XIX. This agreement shall be deemed a cancellation of the Memorandum of Agreement, dated April 29, 1929, between the parties hereto as of the date hereof and this agreement shall represent the sole agreement between the parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their proper officers and
2477 their respective seals to be attached hereto as of the day and year first above written.

YELLOW CAB COMPANY,

By A. W. MOORE
President
(Corporate Seal)

Attest:
BENJAMIN SAMUELS
Asst. Secretary.

THE TRANSPORTATION MANAGEMENT CORPORATION,

By E. H. MILLER
President
(Corporate Seal)

Attest:
A. G. STECKLER
Secretary

The undersigned, Chicago Yellow Cab Company, Inc., a corporation organized and existing under the laws of the State of New York, hereby approves and consents to the foregoing agreement.

CHICAGO YELLOW CAB COMPANY, INC.

By A. W. MOORE
President
(Corporate Seal)

Attest:
BENJAMIN SAMUELS
Asst. Secretary

2478 *Gov. Ex. 21*

YELLOW CAB COMPANY
and
THE TRANSPORTATION MANAGEMENT CORPORATION

AGREEMENT

Dated, January 1, 1932.

2479 MEMORANDUM OF AGREEMENT dated as of the 1st day of January, 1932, by and between YELLOW CAB COMPANY, a corporation organized and existing under the laws of the State of Maine, (hereinafter referred to as the "Corporation"), party of the first part, acting for itself and for each subsidiary now existing or hereafter acquired or organized of the Corporation or of Chicago Yellow Cab Company, Inc., a corporation organized and existing under the laws of the State of New York (which owns all of the capital stock of the Corporation, with the possible exception of qualifying shares), including Benzoline Motor Fuel Co., a corporation organized and existing under the laws of the State of Illinois, (the Corporation and such subsidiaries being hereinafter referred to collectively as the "Companies"), and THE TRANSPORTATION MANAGEMENT CORPORATION, a corporation organized and existing under the laws of the State of Delaware, (hereinafter called the "Management Corporation"), party of the second part,

WITNESSETH:

The Management Corporation has been organized for the purpose, among other things, of engaging in the business of assisting in the management of motor transportation companies. It expects to receive compensation from companies to which it renders such assistance. Parmelee

2480 Transportation Company, a Delaware corporation, owns all of the capital stock of the Management Corporation. Parmelee Transportation Company expects that it, or a sales company controlled by it will receive commissions from manufacturers of cabs and other motor vehicles, including Checker Cab Manufacturing Corporation, who sell or may sell their products to the Corporation.

In consideration of the mutual covenants herein contained, the parties hereto agree as follows:

1. The Management Corporation will furnish to the Corporation and each of the Companies, its services, from time

to time, in connection with the management, operation and development of the Corporation and each of the Companies and their respective properties, as follows:

(a) The Management Corporation will place at the service of the Companies its combined experience, advice and assistance and will aid in the solution of such problems as may arise in connection with the conduct of the business of the Companies and the operation of their respective properties and equipment.

(b) The Management Corporation will furnish the services of its Auditing Department and its operating experts to review the accounting operations and methods of the Companies, and to recommend improved or new methods, with a view to reducing the operating cost of the Companies. The books and records of the Companies, including all books of account and statistical records, shall at all times be open to examination and inspection by the Management Corporation and its representatives.

(c) The Management Corporation will manage and supervise the purchasing departments of the Companies in the purchase of supplies, materials and equipment that may be authorized by the respective Boards of Directors of the Companies. The Management Corporation shall initiate and make recommendations to the executive officers and/or directors of the Com-
2481 panies concerning such purchases, and none of the Companies or their officers shall enter into any agreements or give any orders for any such purchases for amounts involving more than $500. without submitting the same in advance to and consulting with the Management Corporation with respect thereto, and obtaining the approval of the Management Corporation and authorization from the Board ~~of Directors~~ of the particular Company for which such purchase is to be made in connection therewith.

(d) The Management Corporation will furnish the services of its statistical experts to analyze the respective financial and operating reports of the Companies and to compare the operations shown therein with those obtained by other companies, in order that any uneconomical operations may be ascertained, investigated and corrected.

(e) The Management Corporation will furnish the services of its representatives in supervising the in-

surance necessary on the respective properties of the Companies.

(f) The Management Corporation will consult with and advise the respective executive officers and/or Boards of Directors of the Companies in the promotion of public relations and any modifications of existing fare schedules; and it will consult with and advise the respective executive officers and/or Boards of Directors of the Companies concerning finances and financial requirements.

(g) The Management Corporation, subject to the respective Boards of Directors of the Companies, will employ on their behalf and will supervise the activities of their departmental heads and superintendents. It will also advise concerning the relations between the Companies and their employees (other than executive officers) and, subject to the respective Boards of Directors of the Companies, will assist in the selection and/or removal of such employees and the fixing of the rates of compensation and wages to be paid to such employees.

(h) The Management Corporation shall advise and assist on any special technical problems arising in connection with any of the properties and equipment of the Companies, in instructing employees in the most economical method of operation, and in the purchase and installation of new equipment, and shall super-
2482 vise the preparation of specifications, contracts, purchase agreements, forms, certificates or other documents required in the purchase of equipment, supplies and materials.

(i) The Management Corporation shall supervise the advertising policy of the Companies; and it shall negotiate for their account the making and renewal of leases on premises necessary or suitable to the business of the Companies. No officer or executive of any Company shall enter into any lease for the rental of premises without first consulting with the Management Corporation with respect thereto and obtaining the approval of the Management Corporation and the approval of the Board of Directors of the Company for which such lease is to be made in connection therewith.

II. The Companies, and their respective officers, executives and employees shall at all times consult, fully co-

operate and advise with the Management Corporation and its officers and representatives concerning matters with respect to which the Management Corporation is employed under the terms of this agreement.

III. All contracts and orders placed by the Management Corporation, at the request of the Companies, shall be in the name of the Corporation, or of any such subsidiary, as the case may be. The Management Corporation shall be considered as acting solely as agent and advisor of the Companies and shall assume no pecuniary liability under or by reason of any such obligation, and in no event shall the Management Corporation operate or conduct the actual operations of, the taxicabs or equipment of the Companies, which shall at all times be subject to the control of their respective Boards of Directors.

IV. The Corporation, on behalf of itself and the
2483 Companies, hereby employs the Management Corporation for each and every of the purposes for which the Management Corporation agrees to render its services under the terms of this agreement.

V. As compensation for the services to be rendered by the Management Corporation to the Companies herein, the Corporation agrees to pay or cause to be paid to the Management Corporation the following sums:

(1) The sum of Seventy-five Thousand dollars ($75,000.) per annum, payable in equal monthly installments beginning from the date of this agreement until December 31, 1932.

(2) A sum equal to 10% of the consolidated net earnings of the Companies (determined as hereinafter provided) in excess of the sum of $1,600,000. and in addition thereto a sum equal to 2½% of such net earnings (determined in like manner) in excess of the sum of $2,000,000. for the year 1932. Such net earnings (meaning thereby the surplus available for dividends on the stock of the Companies) shall be determined by the accountants of the Corporation regularly employed by it, who shall be a nationally known firm of public accountants of reputable standing, in accordance with the customary accounting practice of the Companies, except that (a) the depreciation charges of taxicabs shall, for the purpose of computing such

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net earnings be taken to be 1½¢ per mile of actual operation (provided, however, that if at any time during the term of this agreement such amount per mile shall be

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found to be insufficient with respect to future operations, then any increased amount shall be fixed by the Board of Directors of the Corporation and the Board of Directors of the Management Corporation) and (b) in the event that the Corporation shall during the term of this agreement procure additional working capital through the sale of securities, there shall be deducted as an expense of the business a sum equal to 10% of the net proceeds of such financing, beginning with the date that the Corporation shall have the benefit and use of such additional working capital. In case the two Boards of Directors cannot agree as to whether the rate of depreciation should be more than

2484 $1\frac{1}{2}$¢ the difference shall be submitted to R. E. Niederwiesen Co. as arbitrator, whose judgment shall be final, provided that in the case of present existing equipment any such excess over $1\frac{1}{2}$¢ shall for the purpose of this contract be charged against surplus and not against net earnings. For the purpose of computing the net earnings upon which such percentage compensation shall be based, there shall be deducted all proper reserves for taxes, including federal taxes, and depreciation, but no allowance for depreciation for any period prior to the year 1929; and no gains derived from the purchase and sale of capital assets or from investments or the purchase and sale or transfer of leaseholds shall be included as earnings, and no losses from similar sources shall be included as expenses or deductions in the computation of such percentage compensation. The fixed compensation referred to in paragraph (1) above shall be deducted as an expense for the purpose of this computation, but the percentage compensation referred to in this paragraph (2) shall not be deducted for such purpose. The amount of such percentage compensation, determined in accordance with this paragraph, shall be paid to the Management Corporation as soon as the certified audit is completed and not later than March first in the year immediately following the year for which such compensation is payable.

VI. No officer or employee of the Management Corporation shall receive any salary or compensation from any of the Companies; and all salaries and expenses of the officers and employees of the Management Corporation shall be paid by it.

VII. The Management Corporation will at all times have and maintain a sufficient number of executives, employees and experts to render the services provided for by the terms of this agreement; and Ernest H. Miller, so long as he shall be the President of the Management Corporation, except in the event of his physical incapacity, and the other employees of the Management Corporation, shall devote sufficient of their time in the City of Chicago, to render such services.

2485 VIII. The term of this agreement shall be from the date hereof to December 31, 1932, inclusive.

IX. All services to be rendered by the Management Corporation under this agreement shall be subject to the direction and control by the Board of Directors of the Corporation, and/or one or more of the Companies for which such services are to be rendered, respectively.

X. This agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns, but neither this agreement nor any of its rights hereunder shall be assignable by the Management Corporation without the written consent of the Corporation first had.

XI. This agreement shall be deemed a cancellation of the Memorandum of Agreement, dated May 8, 1930, between the parties hereto as of the date hereof, and this agreement shall represent the sole agreement between the parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their proper officers and their respective seals to be attached hereto as of the day and year first above written.

YELLOW CAB COMPANY

OK

By A. W. MOORE
President
(Corporate Seal)

Attest:
E. J. KENNEDY
Asst. Secretary.

THE TRANSPORTATION MANAGEMENT CORPORATION

By E. H. MILLER
President
(Corporate Seal)

Attest:
R. J. WYATT
Secretary.

2486 The undersigned, Chicago Yellow Cab Company, Inc., a corporation organized and existing under the laws of the State of New York, hereby approves and consents to the foregoing agreement.

CHICAGO YELLOW CAB COMPANY, INC.

By A. W. MOORE
President
(Corporate Seal)

Attest:
E. J. KENNEDY
Asst. Secretary

2487 *Gov. Ex. 55*

MINUTES of the proceedings of a special meeting of the Board of Directors of CHECKER TAXI COMPANY, held at room 1844, 208 South La Salle Street, Chicago, Illinois, on Tuesday, the 19th day of July, A. D. 1932, at six o'clock in the afternoon of said day, pursuant to the following Waiver of Notice:

Waiver of Notice

We the undersigned being all the members of the Board of Directors of Checker Taxi Company, do hereby waive notice of the time, place and purpose of the holding of a special meeting of the Board of Directors of said corporation. We do hereby designate the 19th day of July, A. D. 1932, at 6 o'clock in the afternoon of said day as the time, and Room 1844, 208 South LaSalle Street, Chicago, Illinois, as the place, and we do hereby consent to the transaction of any and all business that may properly and legally come before said meeting.

Dated at Chicago, Illinois, this 19th day of July, 1932.

A. C. FLYNN
A. C. Flynn

IVAR N. NELSON
Ivar N. Nelson

L. A. STEBBINS
L. A. Stebbins

PAUL C. L'AMOREAUX
P. C. L'Amoreaux

M. M. SOKOLL
M. M. Sokoll

2488 Present: L. A. Stebbins
A. C. Flynn
M. M. Sokoll

M. M. Sokoll, the President, called the meeting to order and A. C. Flynn, the Secretary, recorded the minutes thereof.

Whereupon, the President stated to the meeting that he had received on July 19th, 1932, a communication from the Cab Sales and Parts Corporation, in connection with the acquisition by this company of certain of the driver personnel and cab equipment of the Chicago Cab Company, which he read to the meeting, said communication being in words and figures as follows:

"July 19th, 1932

Checker Taxi Company,
Chicago, Illinois.

Gentlemen:

We have recently acquired and are now the owners of certain of the stock of Chicago Cab Company, operating at this time approximately 250 cabs in the City of Chicago.

Because of present business conditions, it is desirable that operations of that company be suspended for an undetermined period, provided we can arrange with you to take over our driver personnel with cab equipment on certain terms and conditions, and we therefore propose to you the following:

1. We will cause the Chicago Cab Company to reconvey their cab equipment to their drivers and to release the drivers from their written contracts with that company and to enter into contracts with you on your usual and customary terms, except that you to take them into your organization without charge for initiation fees or collateral, bond deposits or the like.

2. Certain cabs that would be brought into your fleet by drivers of Chicago Cab Company are subject to chattel mortgages belonging to the Checker Cab Manufacturing Corporation of Kalamazoo, Michi-
2489 gan, and as to such cabs conveyed to you, you are to make the collection on the mortgages referred to in accordance with their terms, without charge, and deliver the proceeds, when, as, and if collected, to the Checker Cab Manufacturing Corporation. (A list of the cabs and mortgage obligations thereon are hereto attached.)

3. We will cause the Chicago Cab Company to release its contracts with concessionaires in the City of Chicago to make available to you such concessions, and we agree to aid you in procuring concession contracts with the Stevens Hotel and the LaSalle Hotel, at a cost to you of not to exceed one-half the amount now being paid by the Chicago Cab Company, and in the event you fail to procure said concessions, this agreement shall at your option become null and void.

4. We will cause the Chicago Cab Company at your request to transfer to you all of the telephone orders for cab service received by it from time to time hereafter during the period of this agreement.

5. We will procure for you the consent of the Checker Cab Manufacturing Corporation of Kalamazoo, Michigan, to release you from the terms of your contract with them, of date February 5th, 1930, so that you may take into your organization equipment other than cabs manufactured by Checker Cab Manufacturing Corporation, now in the fleet of the Chicago Cab Company.

6. Approximately 50% of the fleet of Chicago Cab Company is being operated double shift, so that the total additional revenue that would accrue to you by reason of this acquisition would approximate $195,000. per annum, being 250 cabs at an average charge of $65.00 per cab per month. You can Handle this additional business without added expense of operation except as to your insurance cost of $25.00 per month per cab, leaving you a net profit of $40.00 per month per cab, or approximately $100,000.00 per annum. You are to pay us, therefore, in the event you accept this proposal, $20.00 per month per cab for each cab now operating in the Chicago Cab Company fleet conveyed to you, for a period of five (5) years from and after the date of such conveyance.

2490 7. We are to have a first right and option, expiring July 19th, 1933, to cause Chicago Cab Company to resume operations and to cancel this agreement, in which event you will at our request release any of the Chicago Cab drivers taken into your organization who may then be in good standing with you and elect to sever their contract relations with you, and likewise will reconvey to such drivers their cab equipment. We are, nevertheless, to receive all monies due us hereunder to the date of cancellation of such driver's contracts.

8. You are to have a first right and option at any time during the period of this agreement after July 19th, 1933, to pay us $100,000.00 in cash, and be relieved and discharged of any continuing obligation to us for the balance of the period of this agreement.

We will appreciate your immediate consideration of this proposal.

Respectfully yours,

CAB SALES AND PARTS CORPORATION

By PAUL C. L'AMOREAUX

President."

The President then stated that he considered it very desirable for the company to acquire such equipment and driver personnel, as it would increase the gross revenue of the company approximately twenty-five percent (25%), and the only added expense the company would have would be the insurance cost on the cabs acquired and, as stated in the communication, the net profit to the company would be approximately $100,000.00 a year; provided the cabs acquired remained in the fleet. He thereupon recommended acceptance of the proposal, provided payment could be made to Cab Sales and Parts Corporation only in the event the cabs remained in the company and the storage and other charges actually collected from the drivers.

2491 Considerable discussion followed, and the following resolution was thereupon duly and unanimously adopted:

RESOLVED: That the offer of Cab Sales and Parts Corporation to cause certain of the driver personnel of the Chicago Cab Company to enter into driver's contracts with this corporation, and to cause certain cab equipment now owned by the Chicago Cab Company to be ultimately conveyed to this corporation on terms and conditions particularly set forth in the proposal of Cab Sales and Parts Corporation presented to this meeting, be and the same is hereby accepted and approved in all respects, subject only to the payment by this company to Cab Sales and Parts Corporation of any moneys that may become due it thereunder, when, as and if collected by the Checker Taxi Company, and Be it further

RESOLVED: That the President of this corporation is hereby authorized, empowered and directed to

communicate with Cab Sales and Parts Corporation accepting said proposal, subject only to the limitation set forth in this resolution, and Be it further

RESOLVED: That the proper officers of this company be and they are hereby authorized, empowered and directed to take such action, execute and deliver such documents as may be necessary and advisable in their opinion to fully consummate the transaction hereby approved.

There being no other or further business to come before the meeting, it was on motion duly made, seconded and unanimously carried.

RESOLVED: That said meeting stand adjourned.

Meeting adjourned, *sine die*.

A true record

Teste.

A. C. FLYNN
Secretary

2492 *Gov. Ex. 91*

MINUTES of the proceedings of a special meeting of the Board of Directors of CHECKER TAXI COMPANY, held at the office of the company, 1401 West Jackson Boulevard, Chicago, Illinois, on Friday, the nineteenth day of April, 1935, at ten o'clock in the forenoon of said day, pursuant to the following written Waiver of Notice:

Waiver of Notice

We, the undersigned, being and constituting the entire Board of Directors of Checker Taxi Company, and being now present, do hereby waive notice of the time, place and purpose of the holding of a special meeting of said Board of Directors. We do hereby designate Friday, the nineteenth day of April, 1935 at ten o'clock in the forenoon of said day as the time, and the office of the company, 1401 West Jackson Boulevard, Chicago, Illinois, as the place, and we do hereby consent to the transaction of any and all business that may properly and legally come before the meeting.

Dated at Chicago, Illinois, this nineteenth day of April, 1935.

M. M. SOKOLL
GEORGE MCDONALD
A. C. FLYNN
JOS. MCMATH
JULIUS JESMER

2493 Present: M. M. Sokoll
George McDonald
A. C. Flynn
Jos. McMath
Julius Jesmer

being and constituting the entire Board of Directors of this company.

Mr. Sokoll, the President, called the meeting to order and Miss Flynn, the Secretary, recorded the minutes thereof.

The President advised the meeting had been called for the purpose of considering and acting upon a proposition presented to him by the Checker Cab Manufacturing Corporation and Cab Sales & Parts Corporation, which is fully set forth hereafter.

He further advised the meeting that on February 5th, 1930, this company entered into a contract with the Checker Cab Manufacturing Corporation and the Cab Sales & Parts Corporation, whereby this company agreed to purchase or cause its drivers to purchase from Checker Cab Manufacturing Corporation all taxicabs to be used in the service of Checker Taxi Company for a period of five years from the date of the contract; that as a result of the execution of the contract, several hundred cabs were purchased by individual drivers, and the notes covering the unpaid balances of the purchase price of cabs so sold were endorsed by this company, pursuant to the terms of the contract; that there is still due and unpaid on said notes
2494 approximately $190,000.00, which is the obligation of this company; that because of the financial depression, he had prevailed upon the Checker Cab Manufacturing Corporation to release this company of its obligation under the contract regarding the purchase of all cabs from the Checker Cab Manufacturing Corporation; that the Checker Cab Manufacturing Corporation had released this company from the contract, but only in so far as the purchase of equipment was concerned, until a time to be determined by the Checker Cab Manufacturing Corporation, in its sole and exclusive discretion.

The President further advised that he had been approached by Mike Shapiro, operator of the fleet known as the "Shapiro Fleet" and representative of Cab Sales & Parts Corporation, and by a representative of the Checker Cab Manufacturing Corporation, concerning the purchase by Cab Sales of five hundred (500) new taxicabs to be

operated by Shapiro in the Checker Taxi Service. They submitted a proposition outlined in a contract, which is in words and figures as follows, to-wit:

MEMORANDUM OF AGREEMENT dated this 19th day of April, 1935, by and between CHECKER TAXI COMPANY, a Delaware corporation, of Chicago, Illinois, hereinafter referred to as "Taxi", CHECKER CAB MANUFACTURING CORPORATION, a New Jersey corporation of Kalamazoo, Michigan, hereinafter referred to as "Checker", and CAB SALES & PARTS CORPORATION, a Delaware corporation, of Chicago, Illinois, hereinafter referred to as "Sales Co.", WITNESSETH:

That in consideration of the sum of One Dollar ($1.00) paid by each of the parties hereto the others, re-
2495 ceipt whereof is hereby acknowledged, and the mutual covenants herein contained, the parties hereto agree each with the others as follows:

1. Sales Co. agrees to purchase from Checker for use in Taxi's fleet in Chicago, Illinois, and Checker agrees to sell and deliver to Sales Co., subject to the terms of this agreement, five hundred (500) Checker Taxicabs without tires, as herein described, at the price of THIRTEEN HUNDRED FIFTY DOLLARS ($1350) each, plus any state and federal excise taxes and/or sales taxes, plus a finance charge of FORTY-FIVE DOLLARS ($45) on each such taxicab. Sales Co. agrees to pay to Checker at the signing of this agreement an amount in cash equal to ONE HUNDRED DOLLARS ($100.00) per taxicab for each of the 500 taxicabs to be purchased as herein provided, that is to say, the sum of FIFTY THOUSAND DOLLARS ($50,000), and an additional payment of ONE HUNDRED FIFTY DOLLARS ($150) per taxicab, or a total of SEVENTY-FIVE THOUSAND DOLLARS ($75,000) on or before August 1, 1935. Checker agrees to accept payment of the balance of the purchase price of each of said cabs, including the finance charge, said balance amounting to ELEVEN HUNDRED FORTY-FIVE DOLLARS ($1145) per cab, exclusive of state and federal excise and/or sales taxes, which are to be paid in cash, in purchaser's installment notes, endorsed and unconditionally guaranteed by Taxi, dated as of the respective dates of the delivery of said taxicabs, payable in twenty-two (22) monthly installments of FIFTY DOLLARS ($50) each per cab and final installment of FORTY-FIVE DOLLARS ($45)

on each cab payable twenty-three (23) months after the delivery date thereof, and secured by additional sales agreements and/or chattel mortgages or other lien instruments satisfactory to Checker.

II. The cabs to be delivered hereunder shall be 133 or 134 inch wheel base, stream line model, same general body dimensions as F Model Taxicabs now manufactured by Checker and artists' drawings heretofore submitted by Checker to Sales Co., painted green and black and white Checker border, and conforming to the specifications hereto attached as Exhibit 1 and made a part hereof. Changes in specifications may be made by mutual agreement of the parties in writing.

2496 III. Checker agrees, subject however to strikes, lockouts, acts of God and public enemies, and other causes not within its control, to effect delivery to Sales Co. of said five hundred (500) taxicabs purchased hereunder not later than November 30, 1935, at Gary, Indiana, and Sales Co.'s expense, and to deliver approximately fifty (50) of said taxicabs in the month of August, one hundred fifty (150) in the month of September, one hundred fifty (150) in the month of October, and the balance in the month of November, 1935.

IV. Checker will furnish all replacement parts to Sales Co. during the life of the taxicabs delivered hereunder at cost plus fifteen (15) percent.

V. This transaction shall be governed as to warranties by the standard provisions of the form contract now in use by the Automobile Manufacturers Association.

VI. Sales Co. shall have the right at all reasonable times to maintain at Sales Co.'s expense inspectors at the plant of Checker during the manufacture of the taxicabs to be delivered hereunder.

VII. Sales Co. and Taxi further jointly and severally agree that all taxicabs purchased hereafter during a period of five years from this date by Sales Co. or by Taxi, for use in its fleet operations other than taxicabs purchased and owned by individual drivers, shall be purchased from time to time as required from Checker, and in consideration of such agreement and the purchase of five hundred (500) taxicabs at this time, as hereinbefore provided, Checker agrees to cancel and forever discharge the indebtedness in the principal amount of One Hundred Eighty-nine Thousand

Four Hundred Thirty-four Dollars Ninety Cents ($189,434.90), together with all accrued interest thereon, owing to Checker by Sales Co. and Taxi on account of contingent liabilities arising out of the endorsement of taxicab paper signed by driver owners in Taxi's fleet and now held by Checker's wholly owned subsidiary, Fisk Discount Corporation, and set up on its records as Chicago Operator's Notes. All taxicabs to be purchased by Sales Co. and Taxi during said five year period shall be at the prices currently offered by Checker to its preferred customers considering specifications, terms of sale and other conditions.

2497 VIII. In the event of the bona fide sales of the controlling interest in Sales Co. and Taxi by the present owners thereof, not including any transaction made solely for the purpose of evading the provisions of this agreement, then upon the happening of any such event, the obligation of Sales Co. and Taxi to purchase their requirements of taxicabs from Checker shall terminate three years instead of five years from the date hereof.

IX. The terms and provisions of this agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors, legal representatives and assigns.

In Witness Whereof, the parties hereto have executed this agreement in several counterparts as of the day and year first above written.

Checker Taxi Company

By .....

Checker Cab Manufacturing Corporation

By .....

Cab Sales & Parts Corporation

By .....

2498 *Defendant's Exhibit D-1*

PARMELEE TRANSPORTATION COMPANY

Analysis of Automotive Equipment Purchased 1929 to Date

Year	No. of Pieces	Description
1931	25	Checker Limousines 7 Passenger
1936	25	" " "
1937	43	" " "
1937	1	" " 10 "
1938	1	" " "
1939	15	" " "
1939	26	G.M.C. 1½ Ton Trucks
1940	2	Cadillac Limousines 10 Passenger
1941	25	G.M.C. 1½ Ton Trucks
1941	2	Cadillac Limousines 7 Passenger
1943	8	Cadillac Limousines 10 "
1945	1	" " "
1945	5	" " 7 "
1945	1	Lincoln Limousine "
1946	28	Cadillac " "
1946	2	Buicks " "
1946	2	Chryslers " "
1946	1	Packard " 10 "
1946	6	Packard " 7 "
1947	11	Packard " 7 "

2499 *Defendant's Exhibit D-2*

TOTAL FACTORY UNIT PRODUCTION
OF
PASSENGER CARS, TRUCKS & BUSES

Source: Automotive Industries American Statistical Number 3/15/48

1929	5,358,420
1930	3,355,986
1931	2,389,738
1932	1,370,678
1933	1,920,057
1934	2,753,111
1935	3,946,934
1936	4,454,115
1937	4,808,974
1938	2,489,085
1939	3,577,292
1940	4,472,286
1941	4,840,502
1942	1,041,524
1943	699,828
1944	738,134
1945	725,215
1946	3,089,550
1947	4,797,587

General Motors

Total Unit Sales

1929	NA	1939	1,542,776
1930	1,158,293	1940	2,025,343
1931	1,033,518	1941	2,257,124
1932	525,727	1942	301,490
1933	802,104	1943	152,546
1934	1,128,326	1944	276,539
1935	1,564,252	1945	275,573
1936	1,866,589	1946	1,175,448
1937	1,928,781	1947	1,930,918
1938	1,108,007		

Chrysler

Total Unit Sales of Auto. Vehicles

1929	450,543	1939	778,781
1930	269,898	1940	1,044,260
1931	272,118	1941	1,028,130
1932	222,512	1942	NA
1933	451,734	1943	NA
1934	598,884	1944	NA
1935	843,699	1945	NA
1936	1,066,229	1946	677,379
1937	1,158,518	1947	944,379
1938	570,852		

Ford

Production of Cars & Trucks (Units)

1929	1,951,092	1939	941,432
1930	1,485,602	1940	1,054,717
1931	762,058	1941	1,088,757
1932	431,391	1942	405,019
1933	502,992	1943	297,687
1934	858,784	1944	297,926
1935	1,342,346	1945	259,676
1936	1,194,525	1946	776,836
1937	1,314,705	1947	1,227,431
1938	763,307		

Packard

Production of Cars

1929	NA	1939	76,573
1930	28,177	1940	76,927
1931	13,123	1941	66,900
1932	8,018	1942	NA
1933	6,670	1943	NA
1934	6,071	1944	NA
1935	52,256	1945	2,722
1936	80,699	1946	42,102
1937	109,518	1947	55,477
1938	50,260		

NA — Not Available.

2500

General Motors

Dollar Sales

1929	1,504,404,472
1930	983,375,137
1931	808,840,723
1932	432,311,868
1933	569,010,542
1934	862,672,670
1935	1,115,641,511
1936	1,439,289,940
1937	1,606,789,841
1938	1,066,973,000
1939	1,376,828,337
1940	1,794,936,642
1941	2,436,800,977
1942	2,250,548,859
1943	3,796,115,800
1944	4,262,249,472
1945	3,127,934,888
1946	1,962,502,289
1947	3,815,159,163

Chrysler

Dollar Sales

1929	375,033,455
1930	207,789,338
1931	183,803,104
1932	136,546,522
1933	238,675,952
1934	362,254,626
1935	516,830,333
1936	667,138,391
1937	769,807,839
1938	413,250,512
1939	549,806,327
1940	744,561,239
1941	888,366,410
1942	623,655,208
1943	886,467,702
1944	1,098,073,025
1945	994,545,833
1946	870,000,412
1947	1,362,626,751

	Ford Dollar Sales		Packard Dollar Sales
1929	1,143,828,002	1929	NA
1930	873,927,629	1930	57,690,021
1931	462,768,510	1931	29,987,159
1932	258,968,054	1932	15,515,696
1933	NA	1933	19,229,790
1934	NA	1934	14,618,743
1935	NA	1935	49,866,420
1936	NA	1936	73,052,859
1937	NA	1937	94,422,478
1938	NA	1938	48,340,555
1939	NA	1939	63,425,063
1940	NA	1940	69,235,169
1941	NA	1941	100,817,403
1942	NA	1942	221,922,430
1943	NA	1943	340,716,931
1944	NA	1944	455,118,588
1945	NA	1945	216,128,586
1946	NA	1946	92,815,049
1947	NA	1947	116,625,091

NA — Not Available.

Company figures taken from Standard & Poor's Corporation Records, which are based on company reports.

2501 *Defendant's Exhibit D-3*

	Arrearages on Driver's Service charges	*Arrearages written off to bad debts*
1931	86,957.46	
1932	220,824.45	12,000.00
1933	178,525.30	128,214.92
1934	48,257.51	113,229.50
1935		43,942.23
		297,386.65

2502 *Defendant's Exhibit D-4*

In the District Court of the United States
For the Northern District of Illinois
Eastern Division

No. 13389

CHECKER TAXI COMPANY, a corporation,

vs.

O. WERGIN, *et al.*

Decree

This cause came on to be heard at this term and was argued by counsel, and the court having made its findings of facts and conclusions of law, and simultaneously filed

the same herein, and being fully advised in the premises, it was and is ordered, adjudged and decreed as follows, viz:

1. That the original defendants to this bill, to-wit; O. Wergin, F. Alutis, J. Coleman, W. Ayers, W. Yarwood, T. Kanstans, J. Cooper, B. Levin, H. Glisker, W. Clinker, H. Joseph, C. Bauer, G. Engel, A. Curcio, A. Babitch, E. Witkovsky, W. Zimmerman, G. Haugen, T. Lombardo, N. Stoehrmann, G. Meyers, A. Diehl, C. Cordray, C. Berman, J. Banks, L. Cohen, J. Dinitz, G. Dorman, A. Masters C. Edward, M. Bush, W. Quick, T. Alexander, C. Prestini, W. Van Spankern, K. Lund, J. Gagen, C. Wedean, R. Farb, J. Zits, R. Schubert, A. Sapata, J. Liverman, S. Kalmikoff, H. Anders, H. Bade, M. Cassoff, L. Oppenheim, D. Schultz, J. Wilmot, G. Gregory, E. Mallen, A. Potsckalik, M. Magley, A. Smith, Jr., J. Vattiato, T. Lipski, L. Weinberg, G. Kutsugeras, J. Lipich, M. Jones, I. Weinstock, W. Thompson, J. Heller, E. Petersen, A. Jones, E. Wilson, S. Cacefola, J. Bush, R. Powers, A. Sprang, G. Sullivan, A. Blanche, J. Kriegl, T. Smith, F. Lang, A. Trainor, J. Rittmeyer, A. Rich, T. O'Leary, S. Meyers, J. Rossin, T. Prendergast, A. Cohen, P. Thiel, I. Davis, R. Sterzenbacker, T. Forkel, M. Jacobson, A. Brill, E. Temple, C. Moskowitz, N. Jimson, P. Zeb, A. Lisnick, L. Contos, N. Plein, M. Leroux, T. Aprile, G. Dixon, M. Friedman, P. Pruseit, G. Batty, A. Kamie, W. Risner, S. Jackson, H. Schultz, E. Moseltisky, W. Peterson, R. Pflueger, F. Curry, H. Nelson, J.
2503 Repka, S. Mitchell, C. Rocco, D. Wilson, W. Krugler, Chas. Seitz, Clarence Schaar, C. Gerbing, P. Adaskevich, A. Weisner, H. Ellison, W. Schwartz, P. Falcone, C. Cotarin, C. Tobit, G. Matysek, P. Sessone, J. Worth, M. Dunn, G. Strelon, F. Lubers, F. Riley, R. Hill, L. Rosen, D. Duncan, J. Fucha, C. Dunst, N. Czerniak, C. Hohm, B. Rousseau, O. Klak, A. Cohan, M. Simon, F. Boren, B. Brody, A. Holm, M. Hellman, R. Berlowe, A. Baranowski, S. Goldenson, F. SHapiro, N. Conlan, L. Stull, J. Rossin, A. Feldner, H. Trob, W. Neisel, N. J. McNahon, H. Wolff, S. Borah, T. Battiato, J. Berger, F. Donahue, C. Cleek, C. Weisman, T. Thompson, J. O'Farrell, T. Hill, H. Clauson, L. Book, L. Lazar, H. Herman, A. Immordino, B. Arkush, G. Goldberg, S. Divita, S. London, P. Glinzig, R. Stalder, H. Kardon, A. Miller, M. Paska, W. Srednicki, H. Caplan, A. Poepowski, G. Chugg, W. Schuffman, D. Martinez, H. Chapman, J. Kasin, J. Zeigler, G. Cohen, M. Seiler, J. Goodman, A. Ambler, F. Witseki, A. Wolf, N. Weisberg, A. Krueger, N. Busch, D. Schiffman, D. Parker, C. Konpasky, P. Miller, G. Gussy, G. Vlach, R. Hubert, D.

Lerman, T. Cumoni, H. Petersen, J. Salberg, V. Chierico, T. A. Jantz, A. Mander, J. Ream, L. Butler, S. Ontman, T. Klima, A. Kranz, F. Fisher, T. Sapata, S. Greenberg, F. W. Mayer, T. Tepper, I. Kugler, L. Brodsky, F. Stewart, H. Rokicki, N. Pellin, M. Teitelbaum, W. Kahn, N. Dispenza, J. Domine, J. R. Levin, H. Silverstein, S. Mushin, M. Luther, J. Korshak, C. Busch, P. Lachoff, A. Niemotka, H. Kammerman, C. Kalkanian, A. Nimiz, L. Goldman, S. Kaufman, J. Calendra, H. Licenberg, A. Bonafede, J. Jarzembowski, D. Gold, M. Patrick, E. Trinko, J. Seaman, H. Buchlik, J. Lotterman, E. Jacobson, A. H. Corn, R. Jorgenson, E. Goeppner, A. Gothwaite, L. LVihon, A. Anderson, W. Arden, I. Shimberg, J. I. Monahan, F. Genella, W. Kelber, R. Fein, N. Heinz, R. Houston, B. Earle, G. Klingenberg, H. Shabitz, M. Lesner, E. Guttman, W. Campbell, O. Johnson, J. Okonski, R. Constaboli, Charles Bloom, G. S. Whorter, C. Flood, S. G. O'Connor, E. Penock, T. Katsigenias, E. Franks, Jr. A. Szymanski, H. Keller, L. Poretta, J. Crowder, C. Andrews, M. Weisman, P. Weiner, M. Szaltenas, H. Cooperman, J. Root, S. Levin, J. M. Wikes, L. Bakalich, F. Colby, P. Strazzante, W. Sinder, M. Pinsky, W. Hallie, A. Mariono, T. Ben, F. Harper, T. McMasters, P. Schmitz, J. Kaufman, W. VanHenklom, S. Appleblood, S. Bruno, B. Liesitz, A. Grosvenor, R. Macks, J. Holleck, H. Kelow, M. Haadel, A. Kehm, S. Sardell, M. Levin, R. Carrico, C. Webb, J. Kaplan, J. Smernas, S. Orment, J. Moore, V. Thomazewski, J. Busby, H. Tendet, A. Rosen, N. David, J. Stein, E. Dorsey, J. Pentino, V. Bussard, F. Shorsky, G. Rabb, I. Nixon, J. Evans, C. Praph, S. Goldberg, M. Brody, M. Colon, J. Mack, P. Polode, A. Schallman, E. Dufresne, T. Schweitzer, R. Harris, G. Kominsky, A. Mola, A. Schreiber, M. Joseph, T. Severino, F. Gottler, A. Favaro, J. Blue, P. Grisg, S. Sinder, H. Abraham, N. Lirgonie, R. Mulvaney, S. Ruff, J. Martin, C. Finn, R. Winke, M. Riddle, N. Kalmikoff, T. Corey, M. Rosen, M. Brody, F. J. Brady, A. Wolfson, R. Trautman, T. McIntyre, S. Eisley, L. Weinstein, B. Kaplan, E. Breig, R. Babian, M. Michelson, J. Paschants, J. Werner, J. Damico, J. Chuvala, H. Lesmeister, O. Breger, A. Rosenfeldt, J. Kapper, M. Press, E. Wagner, S. Aprile, M. Silverstein, P. Kissel, W. Blanchard, G. Nemeth, F. Hoppe, V. Immordino, C. Ropolys, B. Dicker, L. Shaps, J. Stridbeck, E. Holle, F. Koserofksy, J. Mallen, H. Fagin, M. Shano, T. Papaleo, J. Superstein, T. Olson, L. Gaskill, H. A. Peterman, W. Freeman, S. Zanders, J. Casella, L. Ruben,

2504

H. Kutchin, L. Grabbs, R. Channon, E. Prestine, P. Rohr, B. Bushonig, C. McCarter, H. Smith, C. White, S. Abrahams, A. Thomas, J. Gamble, J. Kosmasky, B. Nelson, W. Kniff, S. Eichorst, J. Johnson, W. Baker, A. Stark, H. Rosenberg, K. Joseph, A. Lubman, V. Jandon, J. George, R. Miller, N. Maucieri, J. Durkin, V. Schlandt, O. Brandon, G. Kimble, F. Spierer, R. Schassett, F. Stich, T. Glich, I. Himelstein, Leon Anderson, H. Yablonsky, Louis Tolon, C. Walitchuk, Frank Berger, Jos. Prokopsek, Walter Lutz, Sam Fiore, Jay B. Rubin, M. Kalmikoff, T. Goldberg, Adolph Wolek, Harry Kier, Frank McDonnell, J. Fried, David Adleman, John Pilot, Chas. Pfohl, Eugene Broeckel, J. Capozio, N. Feller, Irving Dunne, Geo. Williams, J. Grobel, M. Madler, N. Flax, F. Reinhardt, C. Hickas, S. Rome, B. Sisoff, G. Maddison, A. Ruggeiro, A. Butakis, S. Strauss, A. Grattafiori, W. Rommell, A. Olson, F.
2505 Laudenthal, H. Lebmana, M. Williams, J. Wimmer, C. Steigelman, S. Coleto, A. Pasko, G. Adams, R. Kohler, J. Kolman, T. Reundquist, H. Stark, M. Ascher, V. Cutrone, E. Howard, M. Cohen, R. Pongaro, J. Gross, B. Feldmeier, M. Krause, J. Mart, T. Mader, F. Sloan, J. Fay, L. Murphy, F. Parson, J. Palczyk, A. Kranz, O. White, M. Edelman, L. McArthur, E. Steinberg, S. Badell, J. Plake, E. Tappe, A. Kritzman, E. Tornow, S. Raytor, J. Miller, M. Issacson, J. Podelsak, R. Risner, M. Kokinos, J. Gerson, Chas. Kernene, Geor. W. Howe, Joe Gabrysh, Clement Belinski, Leo Klugerman, E. Klobanenik, Roy Coger, Andrew Cheek, B. Kischeer, John Birdsell, Albert Shore, Frank Vaccaro, R. Harris, A. Hardisty, Herman Bershatsky, G. Liodakis, Mike Laska, John Locascio, John Konig, C. Fletcher, A. Schwald, J. Pizzuti, G. Bourgeias, J. Casady, F. Heinz, J. O'Neil, L. Scheck, C. Schaefer, F. Griffith, S. Joseph, M. Singer, B. Meister, K. Tilden, B. Zucherman, R. Felix, A. Schmidt, F. Baker, O'Neil Fontaine, J. J. Kazer, H. C. Landis, E. Helgeson, C. Gangler, J. Bass, S. Prominski, F. Smith, L. Barnard, M. Miller, H. Colman, M. Feldman, C. Keeser, F. Bisconti, E. Norberg, S. Hamenka, Chas. Greenholdt, S. F. Fuss, J. Kobylauski, F. Sturmer, J. Tomlinson, G. Morice, A. Watnick, L. Mullen, L. Murphy, J. Matual, E. Hess, Mo. Feldman, J. Bein, A. Roberts, M. Goldstein, L. Mustill, E. Krouthen, C. A. George, J. Roels, J. Trilling, Harry Seth, J. McKeown, M. Engfer, F. Richmond, B. Panlow, J. Klasek, D. S. Carpenter, F. Herdrick, F. Kischner, B. Glickman, W. Burica, J. Carritano, M. Chubin, M. Zimringblat, J. Mc-

Clain, A. Dultz, M. Robinson, M. Pozner, L. Steiner, A. Wolk, A. Chalem, L. Silver, F. Borger, T. Prade, G. West, G. Ravelay, Chas. Boettner, H. Brown, and each of them, be and they are hereby perpetually restrained and enjoined from operating their several Checker taxicabs in their possession or under their control, or any other Checker taxicabs on the streets of the City of Chicago, or its environs, or anywhere else, or knowingly permitting anyone else to operate the same without first paying
2506 / to the plaintiff any indebtedness that has heretofore or may hereafter accrue against the said several defendants above named and in favor of the plaintiff on the basis of $55.00 per month for single shift, and $75.00 per month for double shifts, as and when such indebtedness shall accrue.

2. That said defendants, above named in paragraph 1, be likewise perpetually restrained and enjoined from in any wise, directly or indirectly, preventing, obstructing or inteferring with the plaintiff or any of its agents, servants or employees from taking possession of said taxicabs without process of law, as in the contract of employment between plaintiff and said above named defendants and each of them, it is provided that the plaintiff has a right to do, a copy of which contract is attached to the original bill and marked "Exhibit "A".

3. Said defendants and each of them, above named in paragraph 1, are likewise perpetually restrained and enjoined from advising, aiding or encouraging others of plaintiff's drivers, not herein above named, to in any wise violate their obligations to plaintiff, as embodied in their several contracts with the plaintiff, like Exhibit "A" attached to the original bill herein.

4. Said defendants and each of them, above named in paragraph 1, are likewise perpetually restrained and enjoined from concealing, selling or in any wise disposing of said cabs or any of them, and from taking them or any of them beyond the jurisdiction of this court.

5. That each of said defendants, above named in paragraph 1 hereof, forthwith return the cab or cabs in his possession and operated by him under and by virtue of his contract of employment with the plaintiff, and any other cab under his control, to some one garage of the plaintiff, located at 4642 Madison Street, 5837 South State Street, 2735 Van Buren Street, 4649 North Crawford Avenue and 1806 Greenleaf Avenue, Chicago, Illinois, subject, how-

2507 ever, to the right of the plaintiff, in its sole discretion, to grant from time to time to anyone, or more of said defendants named in paragraph 1 hereof, additional time to pay his past due indebtedness during which additional time or times, this mandatory injunction shall not be operative, but shall immediately become operative upon failure of said defendant or defendants, to whom such additional time has been granted, to pay said past due indebtedness at the expiration of such additional time given for the payment thereof.

6. As to taxicabs now in the possession of plaintiff, taken by its pursuant to the provisions of the contract between plaintiff and the defendants for past due indebtedness, plaintiff shall, within thirty (30) days from the date of the entry of this Decree, proceed to sell said cab or cabs now in the possession of plaintiff so taken, as aforesaid, subject to any chattel mortgage that may be thereon, at public sale at some one of the garages of plaintiff, upon giving public notice of the time and place of such sale by posting the same in a conspicuous place in said garages for a period of ten (10) days, which said notice shall also state the amount of the indebtedness due and owing by the driver of each cab respectively to the plaintiff, at the time of the entry of this Decree and, from the proceeds of such sale the amount, if any, over and above the amount of said indebtedness, and the costs and expenses of said sale shall be paid to the driver of said cab. The sales of all the cabs to be sold at any one garage may be grouped together in one notice and any such driver of any cab at any time prior to said sale may pay his indebtedness to the plaintiff, and thereupon the plaintiff shall deliver the possession of said cab to the driver thereof, but the driver of any cab so redeemed shall be and is hereby perpetually restrained and enjoined from driving or operating the same thereafter with the color scheme and insignia of plaintiff thereon, without the consent of plaintiff. At said sale the plaintiff, Checker Taxi Company, may become a bidder, and if the cab or cabs are sold to the plaintiff may, to the extent of the indebtedness of the driver to the plaintiff, pay the amount of its bid by cancelling the indebtedness of the driver to the plaintiff, in whole or in part, depending upon the amount of the
2508 bid. Upon such sale being had, the title of said cab or cabs shall absolutely vest in the purchaser, free and clear of all claims of every name, nature and description, except chattel mortgage indebtedness.

7. In the event a cab or cabs are taken possession of by plaintiff after the entry of this Decree, pursuant to the provisions of the contract between plaintiff and the driver or drivers of cabs so taken possession of, they shall be sold at public auction within thirty (30) days after so taking possession of the same, as provided in the last preceding 6th paragraph of this Decree.

8. The temporary injunction heretofore granted in this cause on the 5th day of July, 1933, is hereby made permanent, except insofar as it conflicts with the provisions of this final decree, and the injunction bond executed in connection with the said preliminary injunction of July 5th, 1933, is hereby declared null and void and the plaintiff and the sureties thereon are relieved from any further liability thereunder.

9. The temporary injunction heretofore granted in this cause on the 5th day of September, 1933, is hereby made permanent, except insofar as it conflicts with the provisions of this final decree, and the injunction bond executed in connection with the said preliminary injunction of September 5th, 1933, is hereby declared null and void and the plaintiff and the Sureties thereon are relieved from any further liability thereunder.

10. The temporary injunction heretofore granted in this cause on the 27th day of September, 1933, is hereby made permanent, except insofar as it conflicts with the provisions of this final decree, and the injunction bond executed in connection with the said preliminary injunction of September 27th, 1933, is hereby declared null and void and the plaintiff and the Sureties thereon are relieved from any further liability thereunder.

2509 11. The temporary injunction heretofore granted in this cause on the 23rd day of October, 1933, is hereby made permanent, except insofar as it conflicts with the provisions of this final decree, and the injunction bond executed in connection with the said preliminary injunction of October 23rd, 1933, is hereby declared null and void and the plaintiff and the Sureties thereon are relieved from any further liability thereunder.

12. Each and all of the exceptions filed by the defendants to the Master's Report are hereby overruled. Each and all of the exceptions to the Master's Report filed by the plaintiff are hereby sustained.

13. The affirmative relief asked by the defendants in their answer in paragraph A, and continuing through successive

paragraphs to paragraph T inclusive, in the nature of a Cross Bill, is hereby denied and said portion of the answer is hereby stricken and dismissed for want of equity.

14. Except as hereinabove provided, and except as modified by this Decree, the report of the Special Master is hereby approved and confirmed.

15. It is further ordered, adjudged and decreed that the respective contracts between the original defendants hereto and the plaintiff, as shown by Exhibit "A" attached to the original bill, are in all respects valid and binding contracts and the provision in said contract that:

> "It being understood that upon thirty (30) days notice in writing to the driver the Company shall have in its sole and exclusive discretion the right to make reasonable revision of said service charges, depending upon the total cost to the Company for taxes, licenses, insurance, the number of stands and concessions leased by the Company and any other expense or overhead of the Company."

is not unilateral and void but, on the contrary, is in
2510 all respects valid and binding on the parties thereto.

16. It is further ordered, adjudged and decreed that that portion of paragraph 1 of Section B of said contract, wherein it is provided that the driver covenants to accept said employment for the life of said cab, which life is to be determined solely by the Company, does not lack mutuality but, on the contrary, is in all respects valid and binding on the parties thereto.

17. The Court hereby expressly reserves jurisdiction of this cause to enter such further orders from time to time as may seem meet to conform to the changing conditions of the operations of the plaintiff, and to preserve and protect the rights of both the plaintiff and the defendants named in paragraph 1 of this Decree, and also to adjudicate the issues now pending on the Amended and Supplemental Bill filed herein as to additional defendants, and also all other issues that may hereafter arise in this cause.

18. It appearing to the court that the plaintiff and the defendants have each advanced and paid to the Special Master in Chancery the sum of Twelve Hundred Fifty Dollars ($1250.00), as and for compensation to the Master for services rendered by him, said payments are hereby approved as reasonable compensation in full to the Master for services rendered by him, and it further appearing to the court that the plaintiff has advanced to Frederick Julian,

the court reporter agreed upon to take the evidence in this cause, the sum of Six Hundred Ninety-Two and 25/100 Dollars ($692.25) for services rendered by said court reporter, and it further appearing to the court that the defendants herein have filed ten (10) exceptions to the Master's Report, all of which have been overruled, it is hereby further ordered, adjudged and decreed that the plaintiff have judgment against the original defendants and each of them, herein-

above named, for the sum of *Nineteen Hundred*
2511 *Forty-Two and 25/100 Dollars ($1,942.25).*

together with the Clerk's cost in this case, taxed at ....., for which sums let execution issue in favor of the plaintiff and against the defendants above named, as at law.

BARNES
Judge

Entered:

January 12th, 1934

2512 In the District Court of the United States
of America
For the Northern District of Illinois
Eastern Division

I, HOYT KING, Clerk of the District Court of the United States of America for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and correct copy of a decree made and entered in said Court on the 12 day of January, A. D. 1934 as fully as the same appears of record in my office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at my office in Chicago, in said District, this 14th day of November, A. D. 1939.

(seal)

HOYT KING
Clerk

2513 *Defendant's Exhibit D-5*

STATE OF ILLINOIS } ss.:
COUNTY OF COOK }

No. 46 C 943

In the Circuit Court of Cook County

YELLOW CAB COMPANY, a Corporation and CHECKER TAXI COMPANY, a Corporation, PLAINTIFFS,

vs.

CITY OF CHICAGO, a Municipal Corporation, EDWARD J. KELLY, Mayor of the City of Chicago, EDWARD J. GORMAN, Public Vehicle License Commissioner of the City of Chicago, and LUDWIG D. SCHREIBER, City Clerk of the City of Chicago, DEFENDANTS.

Judge Feinberg
Feb. 25, 1946
Circuit Court

DECREE

This cause coming on for final hearing upon the complaints as amended for an injunction, the answer as amended filed thereto by the defendants, the stipulation of facts entered into by and between the plaintiffs and the defendants dated February 25, 1946, and the evidence heard, and the parties having rested their respective cases, and the Court having considered the same and having heard the evidence, and having heard the arguments of counsel, and being fully advised in the premises, finds from the evidence, the pleadings, and the record in this cause that the issues and the equities are with the plaintiffs and that all of the material averments of the complaints as amended, have been proven.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the defendants, CITY OF CHICAGO, a Municipal Corporation, EDWARD J. KELLY, Mayor of the City of Chicago, EDWARD J. GORMAN, Public Vehicle License Commissioner of the City of Chicago, and LUDWIG D. SCHREIBER, City Clerk of the City of Chicago, and their agents, servants and employees,
2514 and each and every one of them, be and they hereby are forever enjoined and restrained from doing the following matters and things:

1. From cancelling or causing to be cancelled any taxicab licenses of the plaintiffs, YELLOW CAB COMPANY, a Corporation, and CHECKER TAXI COMPANY, a Corpora-

tion, under and pursuant to certain letters sent by the defendant EDWARD J. GORMAN, Public Vehicle License Commissioner, to each of the plaintiffs on January 22, 1946, or under and pursuant to a certain resolution of the City Council passed on December 28, 1945;

2. From issuing or causing to be issued any permits or licenses under and pursuant to a certain order, resolution or ordinance of the City Council passed January 16, 1946; and from issuing or causing to be issued any permits or licenses in excess of the total number of three thousand (3000) without first holding hearings with respect to the public convenience and necessity therefor and without first affording plaintiffs opportunity to apply for and obtain such permits or licenses to the number thereof provided for in the ordinance passed by the City Council on December 22, 1937.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that plaintiffs do have and recover their costs from the defendants.

ENTER:

FEINBERG
Judge

Dated—February 25, 1946.

2515 *Defendant's Exhibit D-6*

United States of America

STATE OF ILLINOIS } ss.:
SUPREME COURT }

AT A TERM OF THE SUPREME COURT, begun and held in Springfield, on Monday, the thirteenth day of January in the year of our Lord, one thousand nine hundred and forty-seven, within and for the State of Illinois.

PRESENT: WALTER T. GUNN, CHIEF JUSTICE
JUSTICE CLYDE E. STONE
JUSTICE LOREN E. MURPHY
JUSTICE WILLIAM J. FULTON
JUSTICE FRANCIS S. WILSON
JUSTICE JUNE C. SMITH
JUSTICE CHARLES H. THOMPSON
GEORGE F. BARRETT, ATTORNEY GENERAL
HARRY G. NEWMAN, MARSHAL

ATTEST: EARLE BENJAMIN SEARCY, CLERK

BE IT REMEMBERED, that, to-wit: on the 22nd day of January 1947 the same being one of the days of the term of

Court aforesaid, the following proceedings were, by said court, had and entered of record, to-wit:

46C 943

YELLOW CAB COMPANY, a Corporation and CHECKER TAXI COMPANY, a corporation, APPELLEES,

No. 29686 vs.

CITY OF CHICAGO, a Municipal Corporation, EDWARD J. KELLY, Mayor of the City of Chicago, EDWARD J. GORMAN, Public Vehicle License Commissioner of the City of Chicago, and LUDWIG SCHREIBER, City Clerk of the City of Chicago, APPELLANTS.

Appeal from
Circuit Court
Cook County

Error to

And now, on this day, this cause having been argued by counsel, and the Court, having diligently examined and inspected as well the record and proceedings aforesaid, as matters and things therein assigned for error, and now, being sufficiently advised of and concerning the premises for that it appears to the Court now here, that neither in the record and proceedings aforesaid, nor in the rendition of the decree aforesaid, is there anything erroneous, vicious or defective, and in that record there is no error.

THEREFORE, it is considered by the Court that the decree of the Circuit Court of Cook County aforesaid, BE AFFIRMED IN ALL THINGS AND STAND IN FULL FORCE AND EFFECT, notwithstanding the said matter and things therein assigned for error. And it is further considered by the Court that the said appellees recover of and from the said appellants Costs by them in this behalf expended, to be taxed, in due course of law.

I, EARLE BENJAMIN SEARCY, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the Seal of said court this 20th day of March, 1947.

EARLE BENJAMIN SEARCY
Clerk
Supreme Court of the State of Illinois.

2516 *Defendant's Exhibit D-7*

MORRIS MARKIN—DIRECT AND INDIRECT STOCKHOLDINGS IN CCM

Following is the aggregate number of shares of CCM owned by Mr. Markin, directly or indirectly, including all CCM shares owned by any and all corporations in which Mr. Markin was a substantial stockholder:

January 1, 1929—56,182 shares
April 12, 1929—45,157 shares
January 1, 1930—50,782 shares
September 1, 1930—19,581 shares.

(At all times during the period January 1, 1929 through September 29, 1930, the entire outstanding stock of CCM consisted of 375,000 common shares; on September 30, 1930, an additional 58,447 common shares were issued to Mr. Markin in exchange for his stock in Motor Cab Transportation Corporation, thus increasing the total outstanding stock of CCM to 433,447 shares).

September 30, 1930—77,317 shares.

(On August 10, 1932, the capitalization of CCM was reduced from 433,447 common shares outstanding to 108,361¾ common shares outstanding—or a 1 for 4 stock reduction).

August 10, 1932—17,379½ shares.
March 1938—48,730 shares.
March 1946—51,933 shares.

(In March 1946, the capitalization of CCM was increased from 108,361 common shares outstanding to 433,444 common shares outstanding—or a 4 for 1 stock increase).

March 31, 1946—207,732 shares.
April 30, 1947—207,716 shares.

2517 *Defendant's Exhibit D-8*

MORRIS MARKIN—DIRECT AND INDIRECT STOCKHOLDINGS IN PARMELEE

Between its incorporation (April 12, 1929) and September 30, 1930, the aggregate outstanding common stock of Parmelee increased from 250,000 shares to 299,118 shares; and immediately following September 30, 1930, Parmelee's aggregate outstanding common stock increased to 721,905 shares. Since such increase, Parmelee's outstanding common stock has continuously aggregated 721,905 shares.

Mr. Markin's stockholdings, ~~direct and indirect~~, of common shares of Parmelee never exceeded 23,316 shares; and on the following dates they were as follows:

April	1929,	— 15,000
February	1930,	— 23,316
April,	1930,	— 8,566
September	1930	— 250
November	1930	— 150
March	1931	— 6,150
April	1935	— 8,900
January	1936	— 400
November	1942	— 650
Present		650 shares

DEFT'S EXHIBIT D-9

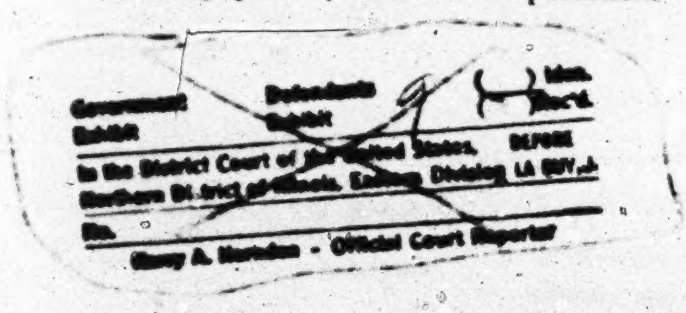
New York City Has Over 6,500 New Checker Cabs in Daily Operation

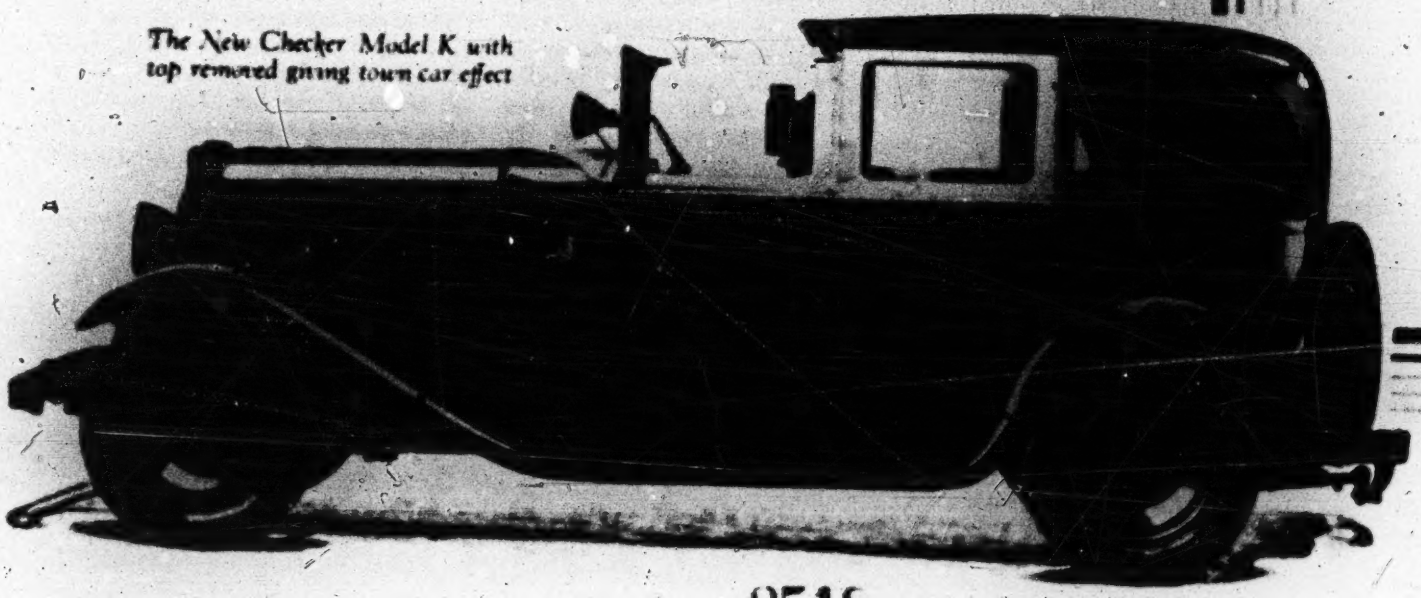
New York City was the first to use the New Checker Cab. The enthusiastic response of the riding public when the New Checker was first introduced created a tremendous demand for the cabs. Bookings were greatly increased and operators were clamoring for Checker cabs.

No other cab in history has gone over as quickly or in as big a way as did the New Checker in New York City. There are already over 6,500 New Checkers in service there, and more are being shipped daily.

The New Checker was designed with one fundamental purpose in mind — to meet the public demand for a higher standard of cab service. Its success in New York, and wherever it is being used, offers convincing evidence that it has won a new popularity for cab transportation.

CHECKER





The New Checker Model K with top removed giving town car effect

Reverse Side Defendant's Exhibit D-9

Specifications Model K Checker Cab

Engine

C. S. 6-Cylinder Checker motor is built expressly for Checker Cab, to their specifications and under their supervision. This motor is the outgrowth of long experience and combined knowledge of Checker Cab and Buda Engineers. Designed to give greatest power, smoothness of operation, acceleration, low operating costs.

Clutch and Transmission

Same as Checker has used for years, only improvements and refinements have been made, such as — *Positive Lubrication* to Pilot and Clutch Throw-out Bearings.

Propeller Shaft

Heavy Spicer Design which needs no introduction to those who have a close knowledge of the automotive industry for the past ten years.

Front and Rear Axles

Major units which have *proven themselves* under Checker for years. The *New Model "K"* cab carries lapped gears for silence and perfect meshing. These axles are safe for the operator as they have been tested through years of hard cab work.

Springs

With the same resiliency and comfort in ride as heretofore. *Checker Springs are Super Quality.* The *Bellex Spring Shackles* give free action of springs and eliminates 12 points of lubrication.

Running Boards

The old Checker heavy steel bumper type is still used for protection. It has been revised, however, to blend in with the luxuriousness of the cab. It carries the same protection with a great deal more refinement.

Steering Gear

Ross Cam and Lever Type, no changes from the old Checker standard, only for additional refinement. A real steering wheel that does not cramp the hands and which carries the gas and spark throttle for convenience to the driver.

Frame

Still using the 8-inch heavy pressed steel construction, with additional improvements, to make it stronger and better. The improvements lie in better designed cross members and in the box type reinforcement which gives it more ability to withstand the bumps in traffic and collision. Examine it! This will convince you that a better frame has not been made.

Emergency Brake

External type on a drum that is mounted on the rear of the transmission and which fulfills a positive emergency brake.

Ask for a Checker Demonstration

As an operator interested in bigger bookings and larger profits you owe it to yourself to investigate the New Checker. What it is doing for others it will do for you. It is a new cab built for a new day and it hits the bullseye of public demand. A demonstration will convince you of the business building possibilities of the New Checker.

Lockheed Hydraulic 4-wheel Service Brake

Greatly over-sized internal four-wheel Brakes that give ability to *stop* in emergencies and a wonderful protection to property and life, especially so, when street conditions are bad. The relining of brakes at short intervals is over. They are almost fool-proof. One of the greatest *adopted mechanical changes* Checker has made for years, but not until a *wonderful experience* was obtained from their use over an eighteen *month period.*

Carburetor

A new design Zenith carburetor, especially adapted to the Checker Cab Motor for *performance* and *economy.*

Gasoline System

20-gallon tank, to accommodate two shifts on one filling. Sight filter. Vacuum tank.

Ignition

Semi-manual control, automatic advance, most approved type and fool-proof battery ignition system, which assures easy starting, perfect idling, and greatest performance.

Fenders

The same 14-gauge steel fender as previously used on Checker Cabs. However, they are formed into a beautiful crown fender and attached to the running board in a greatly improved manner, which beautifies this rugged construction.

Wheels

Checker design Budd wheels that give additional strength and beauty over the stock wheel previously used.

Turning Radius

20 feet, 5 inches.

Wheel Base

127 inches.

Outside Metal Trimmings

Chromium plated. Head lamps. Pillar lamps. Cowl lamps. Spot lamp. Lamp saddle. Windshield. Radiator shell. Rate or vacant sign. Door handles, Hub caps. Tire rings. Fender mirror. Bumpers.

Standard Equipment

Speedometer. Head lamps. Cowl lamps, saddle design. Stop light. Spot lamp. Dome light. Dash light. Vacant lamp. Radiator guide lamp. Windshield wiper. Extra wheel. Tool kit. Lug wrench. Jack. Oil gauge. Ammeter. Oil purifier. Air cleaner. Rubber mats. Double cowl ventilator. Lever operated windshield. Gasoline quick filler cap. Beautiful, group instrument board, invisible lighted with door tell-tale light. Hot air heater. Fender mirror. Chromium bumpers, front and rear.

Checker Cab will be painted your color or combination of colors

CHECKER CAB MFG. CORP.

KALAMAZOO, MICH.

Printed in U. S. A.
by [illegible]
Litho

2518A

2519 *Defendant's Exhibit D-10*

MINUTES of the Annual Meeting of the Board of Directors of CHECKER CAB MANUFACTURING CORPORATION, a New Jersey corporation, held at the office of Fisk Discount Corporation, 1775 Broadway, Borough of Manhattan, City, County and State of New York, on the 27th day of July, 1933, at 11:00 o'clock A. M. (Daylight Saving Time), pursuant to a resolution of the stockholders and to notice duly given.

Present:

Morris Markin
Ralph E. Oakland
Clarence A. Weymouth
J. Morton Baxter
Harry P. Barrand
J. A. King
G. Ray Kaiser

being all of the Board of Directors and a quorum.

Mr. Markin, President of the Corporation, called the meeting to order and acted as Chairman thereof. Mr. Freimark, Secretary of the Corporation, being present, acted as Secretary of the meeting and kept the minutes thereof.

The Secretary then presented to the meeting a copy of the notice thereof, which had been mailed to each director

of the Corporation in accordance with the provisions of its By-Laws, and the same was, upon motion duly made and seconded, approved and ordered affixed to and made a part of the records of the meeting.

The minutes of the Annual Meeting of Stockholders, held on July 19, 1933, were then presented to the meeting and were, upon motion duly made and seconded, approved.

The Chairman then stated that he and the Secretary had filed the Certificate of Amendment to the Amended
2520 Certificate of Incorporation approved at the Annual Meeting of Stockholders on July 19, 1933, and he presented to the meeting a certified copy of said Certificate of Amendment, which was, upon motion duly made and seconded, approved and ordered placed in the minute book of the Corporation.

Upon motion duly made and seconded, the following resolutions were adopted (Mr. Markin not voting):

RESOLVED that this Board of Directors, pursuant to the provisions of paragraph 25 of the By-Laws of this Corporation and the laws of the State of New Jersey, appoint and hereby does appoint an Executive Committee, to consist of Morris Markin, C. A. Weymouth and Harry P. Barrand, of which Executive Committee Mr. Harry P. Barrand is hereby appointed Chairman, to conduct the business and manage the affairs of the Corporation during the intervals between the meetings of the Board of Directors, and, subject to the provisions of these resolutions, to have all the powers and authority of this Board of Directors in the management and conduct of the business and affairs of this Corporation (which are hereby delegated to said Executive Committee), including (but without limitation) the power to authorize the seal of the Corporation to be affixed to all papers which may require it, and to have jurisdiction over the employment and duties of the officers of the Corporation, including the President; that the members of such Executive Committee shall serve until discharged by resolution of this Board of Directors; that such Executive Committee shall keep regular minutes of its proceedings and report the same to this Board of Directors at its regular monthly meetings; and that all vacancies in the membership of said Executive Committee shall be filled by the Board of Directors at any regular or special meeting thereof.

FURTHER RESOLVED that the said Executive Committee may meet at any time within or outside the State of New Jersey, upon twenty-four hours written, oral or telegraphic notice, given by any one member thereof to the other two members thereof, but such notice may in any event be waived either before or after any meeting of the Executive Committee by an instrument in writing signed by any member of the Executive Committee not present thereat.

2521 FURTHER RESOLVED that said Executive Committee is authorized to make such rules and regulations for the conduct of its meetings as it may see fit.

FURTHER RESOLVED that the Executive Committee now in office be and the same hereby is discharged.

Upon motion duly made and seconded, the following resolutions were adopted (Messrs. Markin, King and Oakland not voting):

RESOLVED that 141,639 shares of the par value of $5 each of this Corporation authorized but unissued, be issued for such consideration not less than $5 per share as may be legal under the laws of the State of New Jersey and the provisions of the Amended Certificate of Incorporation of this Corporation.

FURTHER RESOLVED that the Executive Committee is authorized to negotiate for the sale of said shares at the best price obtainable therefor and to report to this Board of Directors with respect to the result of their negotiations, provided, however, that the Executive Committee shall make no firm commitment for the sale of said shares without the prior approval of this Board of Directors.

Upon motion duly made and seconded, the following resolutions were adopted (Mr. Markin not voting):

RESOLVED that Mr. C. A. Weymouth be and he hereby is elected First Vice-President of this Corporation, to serve until the next Annual Meeting of the Board of Directors and until his successor is chosen and qualifies, such election to take effect at once.

FURTHER RESOLVED that Mr. Harry P. Barrand be and he hereby is elected an Assistant Treasurer of this Corporation, to serve until the next Annual Meeting of the Board of Directors and until his successor is chosen and qualifies, such election to take effect at once.

FURTHER RESOLVED that, until further action by this Board of Directors, this Corporation pay tto Mr. C.

A. Weymouth and to Mr. Harry P. Barrand a salary of $1,000 per month each as compensation for their services in acting as First Vice-President and as Assistant Treasurer, respectively, said salaries to commence to accrue on the 27th day of July, 1933.

Upon motion duly made and seconded, the following resolutions were adopted (Mr. Markin not voting):

RESOLVED that all resolutions heretofore adopted by this Board of Directors in opening the bank accounts of this Corporation in the various banks and trust companies wherein this Corporation maintains bank accounts, be and the same hereby are amended, so that all checks, drafts or orders for the payment of money upon any of said accounts be signed by any officer of this Corporation and countersigned by either Harry P. Barrand, Assistant Treasurer, or C. A. Weymouth, First Vice-President.

FURTHER RESOLVED that all authorities heretofore granted to the officers of this Corporation with respect to the signature and countersignature on checks, drafts and orders for the payment of money on any of its bank accounts, be and the same hereby are revoked, and that all checks, drafts and orders for the payment of money be signed and countersigned only as hereinbefore in these resolutions provided.

FURTHER RESOLVED that the Secretary or an Assistant Secretary is hereby authorized, directed and empowered to certify to a copy of the foregoing resolutions and to deliver the same to each bank or trust company where this Corporation maintains a bank account.

Upon motion duly made and seconded, the following resolution was adopted (Mr. Markin not voting):

RESOLVED that this meeting adjourn to reconvene at the same place at 11:00 o'clock A. M. (Daylight Saving Time) on August 4, 1933, for the purpose of electing any officers not elected or re-elected at this meeting, and taking any other action that may properly come before the Annual Meeting of the Board of Directors.

After discussion it was unanimously agreed that no commitments involving any sale, pledge or other disposition of any assets of the Corporation shall be made by any officer or director of the Corporation without the
2523 prior approval of the Board of Directors.

Upon motion duly made and seconded the following resolution was adopted:

RESOLVED that the Executive Committee be and it hereby is authorized to fix and determine the salaries of the officers of the Corporation.

The meeting thereupon adjourned pursuant to the foregoing resolution.

M. HARRY FREIMARK
Secretary

2524 CHECKER CAB MANUFACTURING CORPORATION
NOTICE OF ANNUAL MEETING OF THE BOARD OF DIRECTORS

PLEASE TAKE NOTICE that the Annual Meeting of the Board of Directors of Checker Cab Manufacturing Corporation, a New Jersey corporation, has been called and will be held at the office of Fisk Discount Corporation, 1775 Broadway, Borough of Manhattan, City, County and State of New York, on the 27th day of July, 1933, at 11:00 o'clock A. M. (Daylight Saving Time), for the purpose of organization, the election of officers, and any other business that may properly come before the Annual Meeting of the Board of Directors.

By Order of the Stockholders
M. HARRY FREIMARK
Secretary

Dated, July 19, 1933

2525 *Defendant's Exhibit D-11*

MINUTES of a meeting of the Executive Committee of the Board of Directors of CHECKER CAB MANUFACTURING CORPORATION, a New Jersey corporation, held at the office of Fisk Discount Corporation, 1775 Broadway, Borough of Manhattan, City, County and State of New York, on August 1, 1933, at 5:00 o'clock P. M., Eastern Daylight Saving Time, pursuant to notice duly given.

Present:

Clarence A. Weymouth
Harry P. Barrand

being a majority of the Executive Committee and a quorum.

Mr. Barrand, Chairman of the Executive Committee, called the meeting to order and acted as Chairman thereof. Mr. Freimark, Secretary of the Corporation, being present, acted as Secretary of the meeting and kept the minutes thereof.

The Secretary presented to the meeting a copy of the notice thereof which had been served in accordance with the

provisions of the By-Laws of the Corporation, and the same was upon motion duly made and seconded, approved and ordered affixed to and made a part of the records of the meeting.

The Chairman stated that at the Annual Meeting of the Board of Directors held on July 27, 1933, it had been resolved as follows:

2526 RESOLVED that 141,639 shares of the par value of $5 each of this Corporation authorized but unissued, be issued for each consideration not less than $5 per share as may be legal under the laws of the State of New Jersey and the provisions of the Amended Certificate of Incorporation of this Corporation;

FURTHER RESOLVED that the Executive Committee is authorized to negotiate for the sale of said shares at the best price obtainable therefor and to report to this Board of Directors with respect to the result of their negotiations, provided, however, that the Executive Committee shall make no firm commitment for the sale of said shares without the prior approval of this Board of Directors.

The Chairman then stated that he had received the following telegram from Mr. Morris Markin:

"1933 Aug 1 PM 2 17

Received at 955 Eighth Ave. New York

RXNBA211 73-Chicago Ill 1 1253 P

Harry P Barrand, Checker Cab Mfg Corp—

Care Fisk Discount Corp 1775 Broadway—

Unable to attend executive committee meeting this afternoon Very much surprised meeting called so suddenly when you knew I was in Chicago Stop Protest against issuance of any stock or making of any commitment for sale of stock without prior approval of Board of Directors Stop Executive Committee has no power to issue stock in any of them Stop Please present this telegram to Executive Committee so that it becomes part of record—

MORRIS MARKIN."

The Chairman then stated that in connection with entering into negotiations for the sale of said shares he believed an option to purchase all or a part of the 141,639 shares of the capital stock of the corporation authorized but unissued might be secured from a responsible part. He sug-

2527 gested calling the matter to the attention of the Board at its next meeting and requesting authority from it to negotiate for such an option contract at a price not less than $5 a share for a period of not more than 50 days. Before the contract is executed it shall be submitted to the Board for its approval.

There being no further business to come before the meeting, the same was duly adjourned.

M. H. FREIMARK
Secretary

2528 WESTERN UNION

Received at
ND270 94-EB New York NY 31 520P 1933 Jul 31 PM 4 32

Notice of a meeting of the Executive Committee of Checker Cab Manufacturing Corporation is hereby given to be held at the office of the Fisk Discount Corporation Seventeen Seventy Five Broadway New York New York on Tuesday August First Nineteen Thirty Three at Five PM Eastern Daylight Saving Time to consider and act upon the issuance and sale of up to one hundred forty one thousand six hundred thirty nine shares of the Corporation of the par value of five dollars per share and to take any other action that may properly come before the meeting—

H. P. BARRAND
Chairman

2529 *Defendant's Exhibit D-12*

MINUTES of a Special Meeting of the Board of Directors of CHECKER CAB MANUFACTURING CORPORATION, a New Jersey corporation, held at the office of Fisk Discount Corporation, 1775 Broadway, Borough of Manhattan, City, County and State of New York, on the 14th day of August, 1933, at 11:00 o'clock A. M. (Daylight Saving Time), pursuant to notice duly given.

Present:

C. A. Weymouth
Harry P. Barrand
Morris Markin
Ralph E. Oakland
James A. King

being a majority of the Board of Directors of the Corporation in office and a quorum.

They were also present Mr. George Weymouth of Laird & Co., Esqs.; Mr. E. W. Debevoise of Debevoise & Stevenson, Esqs., and Mr. C. P. G. Fuller of Chadbourne, Hunt, Jaeckel & Brown, Esqs., of counsel for the Corporation; Mr. G. Campbell Beckett of counsel for Mr. George Weymouth, and a stenographer.

Mr. Markin called the meeting to order and was, upon motion duly made and seconded, appointed temporary Chairman of the meeting. Mr. Barrand, Secretary of the Corporation, acted as Secretary of the meeting and kept the minutes thereof.

The Secretary then presented to the meeting a copy of the notice thereof, which had been sent by the Assistant Secretary pursuant to the direction of Mr. Ralph E. Oakland and Mr. James A. King, directors, and the same was, upon motion duly made and seconded, approved.

The minutes of the meetings of the Board of Directors held August 2, 1933, August 4, 1933 and August 10, 1933, were then presented to the meeting and were, upon motion duly made and seconded, approved as to form.

The resignation of Mr. G. Ray Kaiser, dated August 12, 1933, as a director of the Corporation was then presented to the meeting and was, upon motion duly made and seconded, accepted and ordered affixed to and made a part of the records of the meeting.

Mr. Raymond S. Pruitt was then, upon motion duly made and seconded, duly nominated a director of the Corporation for the unexpired term of Mr. G. Ray Kaiser as a director. There were no further nominations.

Upon motion duly made and seconded, the following resolution was unanimously adopted:

> Resolved that Mr. Raymond S. Pruitt be and he hereby is elected a director of this Corporation to fill the unexpired term of Mr. G. Ray Kaiser, to serve until the annual meeting of stockholders in the year 1935 and until his successor is chosen and qualifies, such election to take effect at once; and the Secretary is hereby authorized and directed to cast a vote for Mr. Pruitt as such director.

Mr. Pruitt, being present, thereupon joined the meeting and participated in its further deliberations.

The resignation of Mr. J. Morton Baxter, dated August 11, 1933, as a director and an officer (First Vice-President) of the Corporation was then presented to the meeting and was, upon motion duly made and seconded, accepted and

ordered affixed to and made a part of the records of the meeting.

Mr. Lucius B. Manning was then, upon motion duly made and seconded, duly nominated a director of the Corporation for the unexpired term of Mr. J. Morton Baxter as a director. There were no further nominations.

2531 Upon motion duly made and seconded, the following resolution was unanimously adopted:

RESOLVED that Mr. Lucius B. Manning be and he hereby is elected a director of this Corporation to fill the unexpired term of Mr. J. Morton Baxter, to serve until the annual meeting of stockholders in the year 1935 and until his successor is chosen and qualifies, such election to take effect at once; and the Secretary is hereby authorized and directed to cast a vote for Mr. Manning as such director.

Mr. Manning, being present, thereupon joined the meeting and participated in its further deliberations.

The resignation of Mr. C. A. Weymouth, dated August 11, 1933, as a director and an officer (President) of the Corporation was then presented to the meeting and was, upon motion duly made and seconded, accepted to take effect at once, and ordered affixed to and made a part of the records of the meeting.

Mr. W. H. Beal was then, upon motion duly made and seconded, duly nominated a director of the Corporation for the unexpired term of Mr. C. A. Weymouth as a director. There were no further nominations.

Upon motion duly made and seconded, the following resolution was unanimously adopted:

RESOLVED that Mr. W. H. Beal be and he hereby is elected a director of this Corporation to fill the unexpired term of Mr. C. A. Weymouth, to serve until the annual meeting of stockholders in the year 1936 and until his successor is chosen and qualifies, such election to take effect at once; and the Secretary is hereby authorized and directed to cast a vote for Mr. Beal as such director.

Mr. Beal, being present, thereupon joined the meeting and participated in its further deliberations.

2532 Upon motion duly made and seconded, Mr. Morris Markin was duly nominated President of the Corporation, and Mr. Ralph E. Oakland First Vice-President of the Corporation, in the place and stead of Mr. C. A. Weymouth and Mr. J. Morton Baxter, respectively. There were no further nominations.

An election was thereupon duly held in accordance with the laws of the State of New Jersey and the By-Laws of this Corporation, and upon canvassing the vote it was found that Mr. Morris Markin had received five votes for President of this Corporation and had been duly elected President of this Corporation accordingly, and that Mr. Ralph E. Oakland had received six votes for First Vice-President of this Corporation and had been duly elected First Vice-President of this Corporation accordingly.

The resignation of Mr. Harry P. Barrand as Secretary, Treasurer, Chairman of the Board and Chairman of the Executive Committee, was then presented to the meeting and was, upon motion duly made and seconded, accepted to take effect at once and ordered affixed to and made a part of the records of the meeting.

Upon motion duly made and seconded, the following persons were duly nominated to the offices set opposite their respective names, to serve until the annual meeting of the Board of Directors in the year 1934 and until their successors are chosen and qualify, such election to take effect at once:

Treasurer	Ralph E. Oakland
Secretary	Raymond S. Pruitt
Assistant Secretary	Harold Kondolf
Assistant Treasurer	Gavin Weir

2533 An election was thereupon duly held in accordance with the laws of the State of New Jersey and the By-Laws of this Corporation, and upon canvassing the vote it was found that the following persons had been duly elected to the offices set opposite their respective names, to serve until the annual meeting of the Board of Directors in the year 1934 and until their successors are chosen and qualified, such election to take effect at once:

Treasurer	Ralph E. Oakland
Secretary	Raymond S. Pruitt
Assistant Secretary	Harold Kondolf
Assistant Treasurer	Gavin Weir

It was then ordered that the Secretary be sworn to the faithful discharge of his duties and his oath, when executed, be affixed to and made a part of the records of the meeting.

Upon motion duly made and seconded, the following resolutions were unanimously adopted:

RESOLVED that the Executive Committee now in office be and the same hereby is discharged.

FURTHER RESOLVED that this Board of Directors, pursuant to the provisions of paragraph 25 of the By-Laws of this Corporation and the laws of the State of New Jersey, appoint and hereby does appoint an Executive Committee, to consist of Morris Markin, Lucius B. Manning and W. H. Beal, of which Executive Committee Mr. W. H. Beal is hereby appointed Chairman, to conduct the business and manage the affairs of the Corporation during the intervals between the meetings of the Board of Directors, and, subject to the provisions of these resolutions, to have all the powers and authority of this Board of Directors in the management and conduct of the business and affairs of this Corporation (which are hereby delegated to said Executive Committee), including (but without limitation) the power to authorize the seal of the Corporation to be affixed to all papers
2534 which may require it, and to have jurisdiction over the employment and duties of the officers and agents of the Corporation; and to have power to fix and determine and to change all salaries of the officers and agents of the Corporation; that the members of said Executive Committee shall serve until discharged by resolution of the Board of Directors; that said Executive Committee shall keep regular minutes of its proceedings and report the same to the Board of Diretcors at each of its meetings; and that all vacancies in the membership of said Executive Committee shall be filled by the Board of Directors at any regular or special meeting thereof.

FURTHER RESOLVED that the Executive Committee may meet at any time within or outside the State of New Jersey, upon twenty-four hours written, oral or telegraphic notice, given by any one member thereof to the other two members thereof, but such notice may in any event be waived either before or after any meeting of the Executive Committee by an instrument in writing signed by any member of the Executive Committee not present thereat.

FURTHER RESOLVED that the Executive Committee is authorized to make such rules and regulations for the conduct of its meetings as it may see fit.

Upon motion fuly made and seconded, the following resolutions were unanimously adopted:

RESOLVED that the following resolutions, adopted by the Board of Directors at their Special Meeting held on August 2, 1933, be and the same hereby are revoked, and the authorities therein granted and the appointments

and elections thereby or therein made and the salaries therein fixed be and the same hereby are in all respects canceled and rescinded, as of the date of this meeting:

"RESOLVED that Mr. Harry P. Barrand be and he hereby is authorized and empowered to enter into negotiations for the sale of up to 141,637 shares of the Common Stock of the par value of $5 each of this Corporation by means of an option agreement, the terms of said option to be not longer than 50 days; it being understood that before any option agreement is entered into or executed, the same shall be submitted to the Board of Directors for its approval."

2535 "RESOLVED that Clarence A. Weymouth be and he hereby is elected President of this Corporation for a term of one year, and until his successor shall be duly elected and qualifies, at a salary of $12,000 per annum payable monthly, with all the duties and powers conferred upon him as President of the Corporation by the Amended Certificate of Incorporation and the By-Laws of this Corporation."

"RESOLVED that J. Morton Baxter be and he hereby is elected First Vice-President of this Corporation for a term of one year, and until his successor shall be duly elected and qualifies, at a salary of $3,600 per annum, payable monthly, with all the powers and duties conferred upon him as First Vice-President by the Amended Certificate of Incorporation and the By-Laws of this Corporation."

"RESOLVED that Harry P. Barrand be and he hereby is elected the Secretary and the Treasurer of this Corporation for a term of one year and until his successor shall be duly chosen and qualifies, with all the powers and duties conferred upon him as Secretary and as Treasurer by the Amended Certificate of Incorporation and the By-Laws of this Corporation;

FURTHER RESOLVED that a salary of $12,000 per annum, payable monthly, be paid to Mr. Harry P. Barrand as Secretary and as Treasurer of this Corporation."

"FURTHER RESOLVED that Debevoise & Stevenson, Esqs., of 20 Exchange Place, Borough of Manhattan, City, County and State of New York, be and they hereby are appointed General Counsel of this Corporation until further action of this Board of Directors."

"RESOLVED that Messrs. Haskins & Sells be and they hereby are retained as Auditors of this Corporation to make a full and complete audit of this Corporation and of such subsidiary and affiliated companies as the Executive Committee shall in its discretion direct."

"RESOLVED that all checks, drafts, notes, bills of exchange, acceptances, orders, or other instruments for the withdrawal of funds of the Corporation from any of its bank accounts be signed by (1) any
2536 two of the following named officers, to wit: the President, the First Vice-President, and Treasurer; or (2) by any officer of the Corporation provided any such check, note, draft, bill of exchange, acceptance, or order, or other instrument is countersigned by either the President, the First Vice-President, or the Treasurer of this Corporation;

FURTHER RESOLVED that all resolutions heretofore adopted by this Board of Directors opening any of the bank accounts of this Corporation be and the same hereby are amended by the foregoing resolution;

FURTHER RESOLVED that the Secretary be and he hereby is authorized and directed to certify to a copy of the foregoing resolution and to deliver the same to all the banks and trust companies in which this Corporation maintains accounts."

"RESOLVED that the Executive Committee be and it hereby is authorized and empowered to call, on behalf of this Corporation, meetings of stockholders of any corporation, the stock of which is owned as a whole or in part by this Corporation."

FURTHER RESOLVED that the President be and he hereby is authorized and directed to notify the firms and persons referred to in the foregoing revoked resolutions of the termination of their employment.

Upon motion duly made and seconded, the following resolution was unanimously adopted:

RESOLVED that all resolutions heretofore adopted by this Board of Directors or by the Executive Committee authorizing or relating to the issuance of any additional shares of stock of the par value of $5 each of this Corporation, or authorizing negotiations for the sale of said shares, whether by an option agreement or otherwise, and all authorities heretofore granted to any person or committee for the issuance and sale of said shares, or any of them, be and the same hereby are revoked, canceled and rescinded.

Upon motion duly made and seconded, the following resolutions were unanimously adopted:

RESOLVED that all checks, drafts, notes, bills of exchange, acceptances, orders, or other instruments for the withdrawal of funds of the Corporation from any of its bank accounts, except its Payroll Accounts, be signed by the President or by the Treasurer or by F. C. Gibbs, Assistant Secretary or by C. G. Monroe,
2537 Assistant Treasurer, provided any such check, draft, note, bill of exchange, acceptance, order, or other instrument is countersigned by either W. H. Beal, Chairman of the Executive Committee, L. B. Manning, Agent, or Gavin Weir, Assistant Treasurer.

FURTHER RESOLVED that all checks, drafts, notes, bills of exchange, acceptances, orders, or other instruments for the withdrawal of funds of the Corporation from its Payroll Account be signed by any one of the following named officers: President, Treasurer, F. C. Gibbs, Assistant Secretary, G. J. Dolezal, Assistant Secretary, or C. G. Monroe, Assistant Treasurer; only one signature being necessary on any Pay-roll checks.

FURTHER RESOLVED that no checks, drafts or funds be deposited in any Payroll Account of this Corporation unless the same are signed and countersigned as provided in the foregoing resolutions.

FURTHER RESOLVED that all resolutions heretofore adopted by this Board of Directors opening any of the bank accounts of this Corporation be and the same hereby are amended by the foregoing resolutions.

FURTHER RESOLVED that the Secretary be and he hereby is authorized and directed to certify to a copy of the foregoing resolutions, and to deliver the same to all the banks and trust companies in which this Corporation maintains accounts, together with specimens of the signatures of the officers referred to in the foregoing resolutions.

The Chairman then stated that Mr. Oakland, as Assistant Treasurer, had borrowed moneys from Cord Corporation to pay off the loan owing by this Corporation to the First National Bank of Chicago, and had paid off said loan, and to secure Cord Corporation had pledged the collateral securing said loan with Cord Corporation.

Upon motion duly made and seconded, the following resolutions were unanimously adopted:

RESOLVED that all action of the Assistant Treasurer of this Corporation, Ralph E. Oakland, as reported to this meeting, be and the same hereby is in all respects ratified, approved, confirmed and adopted as and for the action of this Corporation.

2538 FURTHER RESOLVED that the President or the Treasurer of this Corporation be and each of them hereby severally is authorized and directed to execute a demand collateral note on behalf of this Corporation, made payable to the order of Cord Corporation in an amount equal to the amount borrowed from said Cord Corporation, and to secure the same to pledge with said Cord Corporation all collateral heretofore pledged with the First National Bank of Chicago.

FURTHER RESOLVED that the proper officers of this Corporation are authorized, directed and empowered to take all action and execute any and all papers that may be necessary or convenient to carry into effect the pledge and the transactions contemplated by the foregoing resolutions.

Upon motion duly made and seconded, the following resolution was unanimously adopted:

RESOLVED that Messrs. Pruitt & Grealis, of Chicago, Illinois, and Messrs. Chadbourne, Hunt, Jaeckel & Brown, of New York City, New York, be and they hereby are appointed General Counsel of this Corporation until further action of this Board of Directors.

The resignation of Mr. James A. King as a director of the Corporation was then presented to the meeting and was, upon motion duly made and seconded, accepted to take effect at once, and ordered affixed to and made a part of the records of the meeting. Mr. King thereupon withdrew from the meeting.

Mr. E. L. Cord was then duly nominated a director of the Corporation for the unexpired term of Mr. James A. King. There were no further nominations.

Upon motion duly made and seconded, the following resolution was unanimously adopted:

RESOLVED that Mr. E. L. Cord be and he hereby is elected a director of this Corporation for the unexpired term of Mr. James A. King, to serve until the annual

2539 meeting of stockholders in the year 1935 and until his successor is chosen and qualifies, such election to take effect at once; and the Secretary of this Corporation is hereby authorized and directed to cast a vote for the election of Mr. Cord as such director.

Upon motion duly made and seconded, the following resolution was unanimously adopted:

RESOLVED that Mr. E. L. Cord be and he hereby is designated, elected and appointed Chairman of the Board of Directors of this Corporation, to serve until the next annual meeting of the Board of Directors and until his successor is chosen and qualifies, such election to take effect at once.

Upon motion duly made and seconded, the following resolution was unanimously adopted:

RESOLVED that this meeting adjourn to reconvene at the same place at 7:00 o'clock P. M. (Daylight Saving Time), on August 14, 1933.

The meeting accordingly adjourned pursuant to the foregoing resolution.

E. J. PRUITT
Secretary of the Corporation

Approved:
M. MORRIS
Temporary Chairman

2540 *Defendant's Exhibit D-13*

TAXICABS MANUFACTURED AND SOLD BY CCM

A. During period 1923 through 1928—8,019.

B. During period January 1, 1929 through December 31, 1947, 29,260, of which

(a) 16,996 were sold to Yellow of Chicago, National Transportation Co. Inc., Yellow of New York, subsidiaries of Motor Cab Transportation, Yellow of Pittsburgh (including Pittsburgh Transportation Company), Yellow of Minneapolis, Cab Sales-Checker-drivers of Checker, and DeLuxe drivers of DeLuxe, and

(b) 12,264 were sold to persons, firms or corporations having no relation whatever to any of the foregoing.

2541 *Defendant's Exhibit D-14*

Taxicab Licenses & Rates
April 1st, 1947

Cab Research Bureau, Inc.
803 Leader Bldg. Cleveland 14, Ohio

2542 Taxicab Licenses & Rates

Alphabetical Index to Cities of Over 50,000 Population
1940 Census

No.	City	Population 1940 Census	No.	City	Population 1940 Census
38.	Akron, Ohio	244,791	146.	Davenport, Iowa	66,039
65.	Albany, N. Y.	130,577	40.	Dayton, Ohio	210,718
97.	Allentown, Pa.	96,904	153.	Dearborn, Mich.	63,584
113.	Altoona, Pa.	80,214	170.	Decatur, Ill.	59,305
194.	Amarillo, Texas	51,686	24.	Denver, Colo.	322,412
178.	Arlington County, Va.	57,040	55.	Des Moines, Iowa	159,819
195.	Asheville, N. C.	51,310	4.	Detroit, Mich.	1,623,452
28.	Atlanta, Ga.	302,288	90.	Duluth, Minn.	101,065
152.	Atlantic City, N. J.	64,094	168.	Durham, N. C.	60,195
148.	Augusta, Ga.	65,919			
101.	Austin, Texas	87,930			
			187.	East Chicago, Ind.	54,637
			136.	East Orange, N. J.	68,945
7.	Baltimore, Md.	859,100	126.	East St. Louis, Ill.	75,609
115.	Bayonne, N. J.	79,198	81.	Elizabeth, N. J.	109,912
172.	Beaumont, Texas	59,061	98.	El Paso, Texas	96,810
104.	Berkeley, Cal.	85,547	72.	Erie, Pa.	116,955
173.	Bethlehem, Pa.	58,490	150.	Evanston, Ill.	65,389
119.	Binghamton, N. Y.	78,309	96.	Evansville, Ind.	97,062
35.	Birmingham, Ala.	267,583			
9.	Boston, Mass.	770,816			
59.	Bridgeport, Conn.	147,121	73.	Fall River, Mass.	115,428
157.	Brockton, Mass.	62,343	56.	Flint, Mich.	151,543
14.	Buffalo, N. Y.	575,901	70.	Fort Wayne, Ind.	118,410
			46.	Fort Worth, Texas	177,662
			167.	Fresno, Cal.	60,685
78.	Cambridge, Mass.	110,879			
71.	Camden, N. J.	117,536			
83.	Canton, Ohio	108,401	165.	Galveston, Texas	60,862
158.	Cedar Rapids, Iowa	62,120	76.	Gary, Ind.	111,719
129.	Charleston, S. C.	71,275	109.	Glendale, Cal.	82,582
139.	Charleston, W. Va.	67,914	52.	Grand Rapids, Mich.	164,292
91.	Charlotte, N. C.	100,899	169.	Greensboro, N. C.	59,319
66.	Chattanooga, Tenn.	128,163			
171.	Chester, Pa.	59,285			
2.	Chicago, Ill.	3,396,808	198.	Hamilton, Ohio	50,592
151.	Cicero, Ill.	64,712	132.	Hammond, Ind.	70,184
17.	Cincinnati, Ohio	455,610	107.	Harrisburg, Pa.	83,893
6.	Cleveland, Ohio	878,336	51.	Hartford, Conn.	166,267
185.	Cleveland Hts., Ohio	54,992	196.	Highland Park, Mich.	50,810
156.	Columbia, S. C.	62,396	199.	Hoboken, N. J.	50,115
191.	Columbus, Ga.	53,280	189.	Holyoke, Mass.	53,750
26.	Columbus, Ohio	306,087	21.	Houston, Texas	384,514
177.	Corpus Christi, Texas	57,301	116.	Huntington, W. Va.	78,836
160.	Covington, Ky.	62,018			
			20.	Indianapolis, Ind.	386,972
31.	Dallas, Texas	294,734	184.	Irvington, N. J.	55,328

2543 TAXICAB LICENSES & RATES

ALPHABETICAL INDEX TO CITIES OF OVER 50,000 POPULATION 1940 CENSUS

No.	City	Population 1940 Census
159.	Jackson, Miss.	62,107
47.	Jacksonville, Fla.	173,065
30.	Jersey City, N. J.	301,173
144.	Johnstown, Pa.	66,668
188.	Kalamazoo, Mich.	54,097
69.	Kansas City, Kans.	121,458
19.	Kansas City, Mo.	399,178
77.	Knoxville, Tenn.	111,580
135.	Lakewood, Ohio	69,160
162.	Lancaster, Pa.	61,345
117.	Lansing, Mich.	78,753
106.	Lawrence, Mass.	84,323
111.	Lincoln, Nebr.	81,984
100.	Little Rock, Ark.	88,039
53.	Long Beach, Cal.	164,271
5.	Los Angeles, Cal.	1,504,277
25.	Louisville, Ky.	319,077
88.	Lowell, Mass.	101,389
95.	Lynn, Mass.	98,123
176.	Macon, Ga.	57,865
141.	Madison, Wis.	67,447
175.	Malden, Mass.	58,010
122.	Manchester, N. H.	77,685
183.	McKeesport, Pa.	55,355
154.	Medford, Mass.	63,083
32.	Memphis, Tenn.	292,942
48.	Miami, Fla.	172,172
13.	Milwaukee, Wis.	587,472
16.	Minneapolis, Minn.	492,370
118.	Mobile, Ala.	78,720
120.	Montgomery, Ala.	78,084
142.	Mt. Vernon, N. Y.	67,362
50.	Nashville, Tenn.	167,402
18.	Newark, N. J.	429,760
80.	New Bedford, Mass.	110,341
137.	New Britain, Conn.	68,685
54.	New Haven, Conn.	160,605
15.	New Orleans, La.	494,537
174.	New Rochelle, N. Y.	58,408
133.	Newton, Mass.	69,873
1.	New York, N. Y.	7,454,995
121.	Niagara Falls, N. Y.	78,029
60.	Norfolk, Va.	144,332
29.	Oakland, Cal.	302,163
147.	Oak Park, Ill.	66,015
42.	Oklahoma City, Okla.	204,424
39.	Omaha, Nebr.	223,844
112.	Pasadena, Cal.	81,864
161.	Passaic, N. J.	61,394
64.	Paterson, N. J.	139,656
124.	Pawtucket, R. I.	75,797
86.	Peoria, Ill.	105,087
3.	Philadelphia, Pa.	1,931,334
149.	Phoenix, Ariz.	65,414
10.	Pittsburgh, Pa.	671,659
145.	Pontiac, Mich.	66,626
128.	Portland, Maine	73,643
27.	Portland, Ore.	305,394
197.	Portsmouth, Va.	50,745
37.	Providence, R. I.	253,504
192.	Pueblo, Colo.	52,162
123.	Quincy, Mass.	75,810
143.	Racine, Wis.	67,195
79.	Reading, Pa.	110,568
45.	Richmond, Va.	193,042
134.	Roanoke, Va.	69,287
23.	Rochester, N. Y.	324,975
105.	Rockford, Ill.	84,637
85.	Sacremento, Cal.	105,958
108.	Saginaw, Mich.	82,794
125.	St. Joseph, Mo.	75,711
8.	St. Louis, Mo.	816,048
33.	St. Paul, Minn.	287,736
166.	St. Petersburg, Fla.	60,812
57.	Salt Lake City, Utah	149,934
36.	San Antonio, Texas	253,854

2544 TAXICAB LICENSES & RATES

ALPHABETICAL INDEX TO CITIES OF OVER 50,000 POPULATION 1940 CENSUS

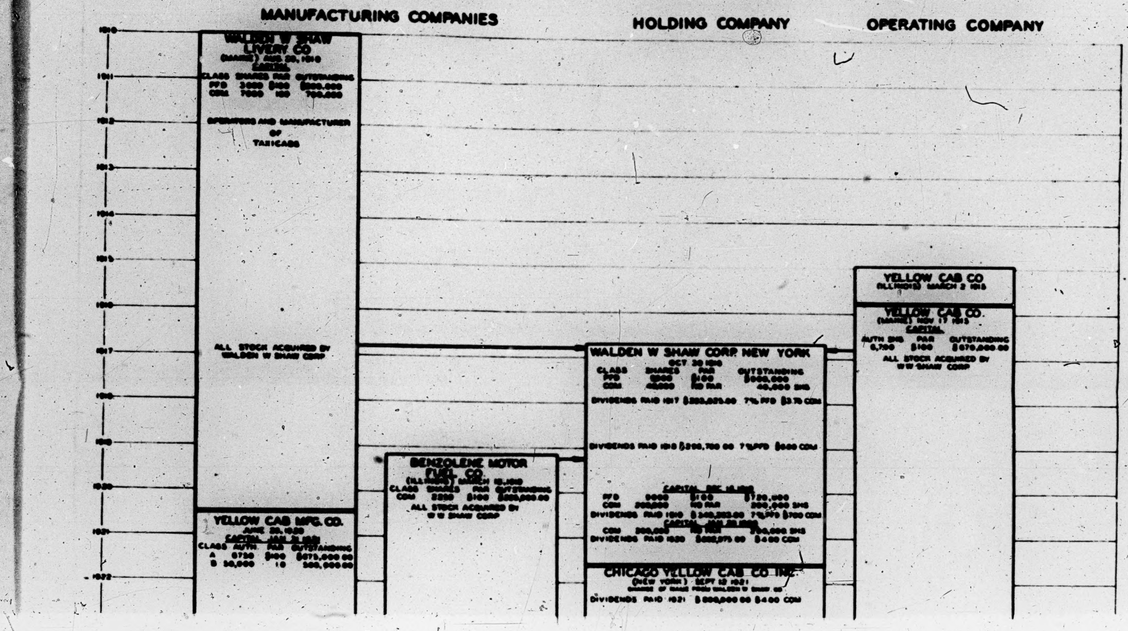
No.	City	Population 1940 Census
43.	San Diego, Cal.	203,341
12.	San Francisco, Cal.	634,536
138.	San Jose, Cal.	68,457
190.	Santa Monica, Cal.	53,500
99.	Savannah, Ga.	95,996
102.	Schenectady, N. Y.	87,54[illegible]
63.	Scranton, Pa.	140,40[illegible]
22.	Seattle, Wash.	368,302
94.	Shreveport, La.	98,167
110.	Sioux City, Iowa	82,364
87.	Somerville, Mass.	102,177
89.	South Bend, Ind.	101,268
68.	Spokane, Wash.	122,001
127.	Springfield, Ill.	75,503
58.	Springfield, Mass.	149,554
163.	Springfield, Mo.	61,238
130.	Springfield, Ohio	70,662
186.	Stockton, Cal.	54,714
41.	Syracuse, N. Y.	205,967
82.	Tacoma, Wash.	109,408
84.	Tampa, Fla.	108,391
155.	Terre-Haute, Ind.	62,693
34.	Toledo, Ohio	282,349
140.	Topeka, Kans.	67,833
67.	Trenton, N. J.	124,697
131.	Troy, N. Y.	70,304
62.	Tulsa, Okla.	142,157
181.	Union City, N. Y.	56,173
179.	Upper Darby Twp., Pa.	56,883
92.	Utica, N. Y.	100,518
182.	Waco, Texas	55,982
11.	Washington, D. C.	663,091
93.	Waterbury, Conn.	99,314
193.	Waterloo, Iowa	51,743
164.	Wheeling, W. Va.	61,099
74.	Wichita, Kans.	114,966
103.	Wilkes-Barre, Pa.	86,236
75.	Wilmington, Dela.	112,504
114.	Winston-Salem, N. C.	79,815
44.	Worcester, Mass.	193,694
61.	Yonkers, N. Y.	142,598
180.	York, Pa.	56,712
49.	Youngstown, Ohio	167,720

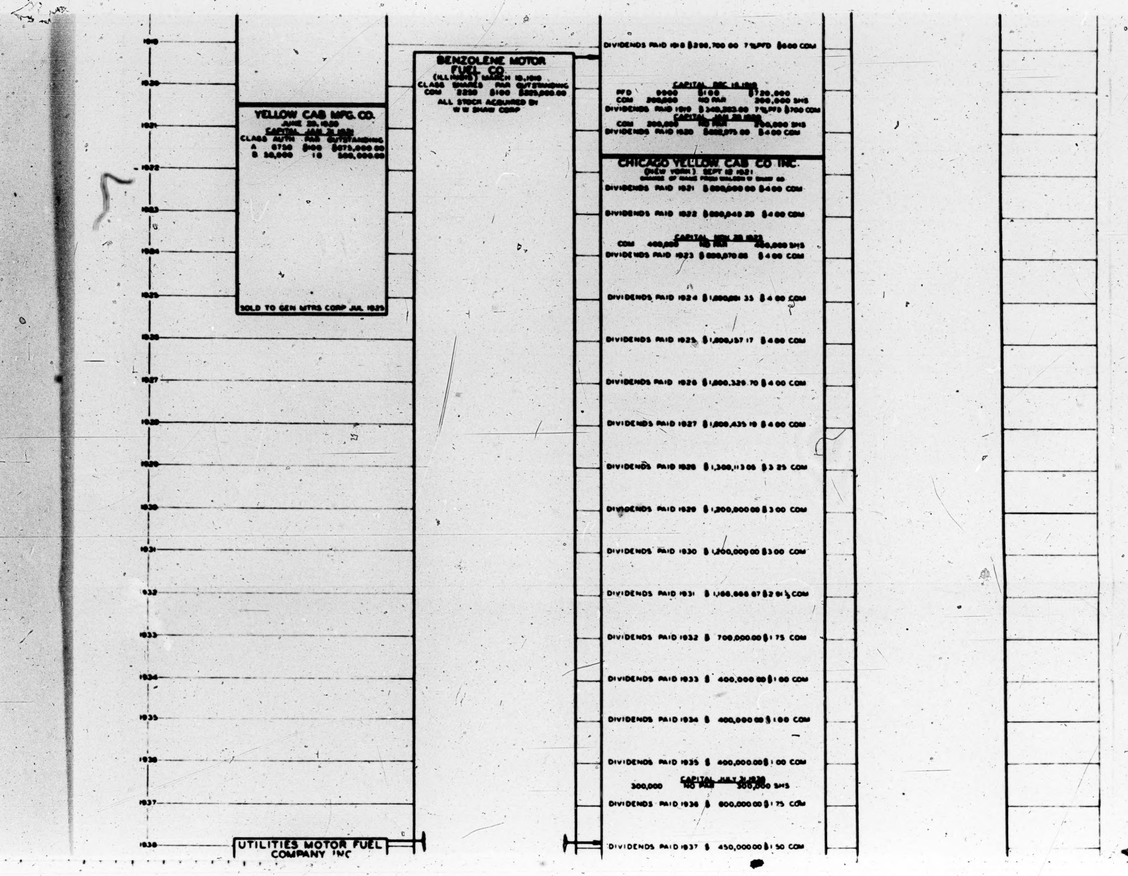
✓ DEFENDANT'S EXHIBIT D,16

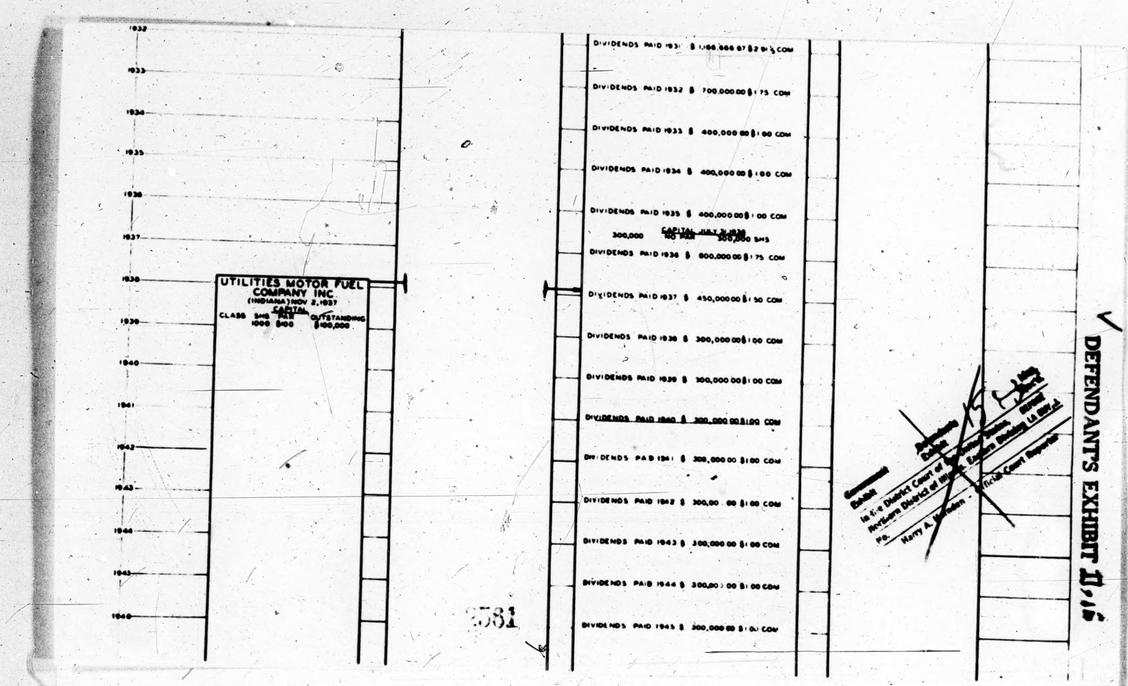
CHICAGO YELLOW CAB COMPANY INC.

NEW YORK

ORGANIZATION, CAPITALIZATION AND AQUISITION OF SUBSIDIARIES BY YEARS







Government Exhibit
In the District Court of the United States
Northern District of Illinois, Eastern Division
No.
Harry A. Iverson
U.S. Court Reporter

✓ DEFENDANT'S EXHIBIT D,16

2545 TAXICAB LICENSES & RATES

IN CITIES OF OVER 50,000 POPULATION

No.	City	Population 1940 Census	No. of Licenses	Rate
1.	New York, N. Y.	7,454,995	11,806	20¢ 1st ¼ mile 5¢ each add. ¼ mile 5¢ each 2 min. wtg. time
2.	Chicago, Ill.	3,396,808	3,275	20¢ 1st ⅓ mile 10¢ each add. ⅔ mile 5¢ each add. pass. over one 10¢ each 3 min. wtg. time
3.	Philadelphia, Pa.	1,931,334	1,512	20¢ 1st ¼ mile 5¢ each add. ¼ mile 5¢ each 2 min. wtg. time
4.	Detroit, Mich.	1,623,452	1,305	25¢ 1st ¼ mile 5¢ each add. ¼ mile 5¢ each 1½ min. wtg. time
5.	Los Angeles, Cal.	1,504,277	1,050	20¢ 1st ¼ mile 10¢ each add. ½ mile 10¢ each 2½ min. wtg. time No charge for traffic delays
6.	Cleveland, Ohio	878,336	511	25¢ 1st ⅓ mile 5¢ each add. ⅓ mile 5¢ each 2 min. wtg. time
7.	Baltimore, Md.	859,100	1,151	25¢ 1st 1⅓ miles 5¢ each add. ⅓ mile 5¢ each 2 min. wtg. time
8.	St. Louis, Mo.	816,048	966	Meter Cabs: 35¢ 1st 1¼ miles 10¢ each add. ½ mile Zone Cabs: 25¢ per pass. 1st zone 25¢ each add. zone
9.	Boston, Mass.	770,816	1,525	25¢ 1st 2/5 mile 5¢ each add. 1/5 mile 5¢ each 1½ min. wtg. time
10.	Pittsburgh, Pa.	671,659	470	25¢ 1st ⅔ mile 5¢ each add. ⅓ mile 5¢ each 2 min. wtg. time

2546

11.	Washington, D. C.	663,091	9,350	Zone Rates: 30¢ to $1.70 (Single Passenger) 10¢ each 5 min. wtg. time
12.	San Francisco, Cal.	634,536	739	25¢ 1st ⅓ mile 10¢ each add. ⅓ mile 10¢ each 2 min. wtg. time Non-Stop Continuous Trip–Max. Rate–$1.35—Anywhere in city
13.	Milwaukee, Wis.	587,472	434	Zone Rates: 35¢ 1st zone 15¢ each zone thereafter 15¢ each 5 min. wtg. time
14.	Buffalo, N. Y.	575,901	346	50¢ 1st 2 miles 5¢ each add. ¼ mile
15.	New Orleans, La.	494,537	1,200	50¢ 1st 3 miles 10¢ each add. mile 10¢ each 3 min. wtg. time

No.	City	Population 1940 Census	No. of Licenses	Rate
16.	Minneapolis, Minn.	492,370	214	25¢ 1st ⅔ mile 10¢ each add. ½ mile 10¢ each 3 min. wtg. time
17.	Cincinnati, Ohio	455,610	316	20¢ 1st ¼ mile 5¢ each add. ¼ mile 5¢ each 1½ min. wtg. time
18.	Newark, N. J.	429,760	600	Metered Cabs: 15¢ 1st 1/5 mile 5¢ each add. 1/5 mile Flat Rate Cabs: 75¢ within city limits
19.	Kansas City, Mo.	399,178	475	25¢ 1st ⅓ mile 10¢ each add. ⅓ mile 10¢ each 3 min. wtg. time
20.	Indianapolis, Ind.	386,972	420	25¢ 1st ⅓ mile 10¢ each add. ⅓ mile 10¢ each 3 min. wtg. time
21.	Houston, Texas	384,514	493	35¢ 1st mile 5¢ each add. ⅓ mile $2.00 her hr. wtg. time
22.	Seattle, Wash.	368,302	339	30¢ 1st ¼ mile 10¢ each add. ½ mile 10¢ each 3 min. wtg. time 10¢ each extra passenger
2547				
23.	Rochester, N. Y.	324,975	227	50¢ 1st mile 5¢ each add. 1/5 mile $3.00 per hr. wtg. time
24.	Denver, Colo.	322,412	234	Zone Rates: 30¢ to 85¢
25.	Louisville, Ky.	319,077	600	25¢ 1st ⅓ mile 5¢ each add. ⅓ mile 5¢ each 2 min. wtg. time
26.	Columbus, Ohio	306,087	192	25¢ 1st ½ mile 5¢ each add. ⅓ mile
27.	Portland, Ore.	305,394	225	30¢ 1st ¼ mile 10¢ each add. ½ mile 10¢ each 3 min. wtg. time 10¢ each extra passenger over one
28.	Atlanta, Ga.	302,288	314	40¢ 1st 2 miles 10¢ each add. 2/5 mile
29.	Oakland, Cal.	302,163	200	30¢ 1st ¼ mile 15¢ each add. 2/5 mile 10¢ each 2 min. wtg. time
30.	Jersey City, N. J.	301,173	53	25¢ 1st mile 5¢ each add. ¼ mile
31.	Dallas, Texas	294,734	315	35¢ 1st 2 miles 5¢ each add. ½ mile $1.50 per hr. wtg. time
32.	Memphis, Tenn.	292,942	200	35¢ 1st 2 miles 10¢ each add. ½ mile
33.	St. Paul, Minn.	287,736	135	35¢ 1st ½ mile 5¢ each add. ¼ mile First 2½ min. wtg. time free, 10¢ each add. 2½ min. wtg. time
34.	Toledo, Ohio	282,349	225	35¢ 1st 2 miles 10¢ each add. 2/5 mile

No.	City	Population 1940 Census	No. of Licenses	Rate
35.	Birmingham, Ala.	267,583	200	35¢ 1st mile 5¢ each add. ¼ mile 5¢ each 2 min. wtg. time
36.	San Antonio, Texas	253,854	376	35¢ 1st mile 5¢ each add. ¼ mile
37.	Providence, R. I.	253,504	340	35¢ 1st 1½ miles 10¢ each add. 2/5 miles
2548				
38.	Akron, Ohio	244,791	109	25¢ 1st ½ mile 10¢ each add. ⅔ mile
39	Omaha, Nebr.	223,844	293	25¢ 1st ¾ mile 10¢ each add. ¾ mile 10¢ each 4 min. wtg. time
40.	Dayton, Ohio	210,718	140	30¢ 1st ½ mile 10¢ each add. ½ mile 10¢ each add. passenger
41.	Syracuse, N. Y.	205,967	328	Zone Rates: 50¢ to $1.00 25¢ each add. passenger over two in 50¢ zone
42.	Oklahoma City, Okla.	204,424	252	Zone Rates: 25¢ to $1.35 10¢ each add. passenger
43.	San Diego, Cal.	203,341	232	40¢ 1st mile 10¢ each add. ½ mile $3.00 per hr. wtg. time
44.	Worcester, Mass.	193,694	250	35¢ 1st mile 10¢ each add. ⅓ mile No charge for extra pass.
45.	Richmond, Va.	193,042	263	Flat Rate 50¢ 1st passenger 10¢ each add. passenger 10¢ each 3 min. wtg. time
46.	Fort Worth, Texas	177,662	197	35¢ 1st 2 miles 10¢ each add. ½ mile
47.	Jacksonville, Fla.	173,065	290	Metered Cabs: 35¢ 1st mile 5¢ each add. ¼ mile 10¢ each 3 min. wgt. time 10¢ each add. passenger Zone Rates: Multiple Rides: 10¢, 20¢, 30¢ and 40¢ per passenger — 1st, 2nd, 3rd and 4th zone
48.	Miami, Fla.	172,172	314	15¢ 1st 1/6 mile 5¢ each add. 1/6 mile
49.	Youngstown, Ohio	167,720	53	30¢ 1st ¼ mile 10¢ each add. ¼ mile 10¢ each 4 min. wtg. time
50.	Nashville, Tenn.	167,402	96	35¢ 1st 6/10 mile 10¢ each add. ½ mile $2.00 per hr. wtg. time
2549				
51.	Hartford, Conn.	166,267	89	20¢ 1st 2/5 mile 5¢ each add. 1/5 mile 5¢ each 1½ min. wtg. time
52.	Grand Rapids, Mich.	164,292	80	25¢ 1st ½ mile 10¢ each add. ½ mile

No.	City	Population 1940 Census	No. of Licenses	Rate
53.	Long Beach, Cal.	164,271	162	20¢ 1st ½ mile 10¢ each add. ½ mile
54.	New Haven, Conn.	160,605	117	20¢ 1st ⅓ mile 10¢ each add. ⅓ mile $2.00 per hr. wtg. time
55.	Des Moines, Iowa	159,819	106	35¢ 1st 1½ miles 10¢ each add. ½ mile
56.	Flint, Mich.	151,543	140	25¢ 1st ¼ mile 10¢ each add. ½ mile $2.20 per hr. wtg. time
57.	Salt Lake City, Utah	149,934	147	Zone Rates: 25¢ to $1.25 15¢ each 5 min. wtg. time after 1st 5 minutes
58.	Springfield, Mass.	149,554	57	25¢ 1st ⅓ mile 10¢ each add. ⅓ mile 10¢ each 3 min. wtg. time
59.	Bridgeport, Conn.	147,121	43	40¢ 1st mile 30¢ each add. mile
60.	Norfolk, Va.	144,332	257	35¢ 1st ½ mile 10¢ each add. ½ mile 10¢ each 3 min. wtg. time
61.	Yonkers, N. Y.	142,598	137	50¢ 1st mile 10¢ each add. ¼ mile
62.	Tulsa, Okla.	142,157	318	Zone Rates: From 25¢ $2.50 per hr. wtg. time
63.	Scranton, Pa.	140,404	75	30¢ per 1¼ miles
64.	Paterson, N. J.	139,656	60	20¢ 1st ¼ mile 10¢ each add. ¼ mile
65.	Albany, N. Y.	130,577	180	Zone Rates: 1st zone—40¢ 1 or 2 passengers 2nd zone—60¢ 1 or 3 passengers 3rd zone—80¢ 1 or 4 passengers 15¢ each add. passenger

2550

66.	Chattanooga, Tenn.	128,163	275	25¢ 1st ⅓ mile 10¢ each add. ⅓ mile 10¢ each 3 min. wtg. time
67.	Trenton, N. J.	124,697	100	Flat Rate: 50¢ 1 or 2 passengers 10¢ each add. passenger over two 10¢ each 3 min. wtg. time
68.	Spokane, Wash.	122,001	174	35¢ 1st mile 15¢ each add. ½ mile 10¢ each add. passenger 15¢ each 3 min. wtg. time after first 3 minutes
69.	Kansas City, Kans.	121,458	165	Zone Rates: 35¢ 1st zone
70.	Fort Wayne, Ind.	118,410	80	Flat Rate: 50¢ 1 to 4 passengers Multiple Rides: 50¢
71.	Camden, N. J.	117,536	46	20¢ 1st ¼ mile 5¢ each add. ¼ mile
72.	Erie, Pa.	116,955	72	30¢ 1st mile 5¢ each add ⅓ mile $2.00 per hr. wtg. time

No.	City	Population 1940 Census	No. of Licenses	Rate
73.	Fall River, Mass.	115,428	50	Zone Rates: 50¢—60¢—85¢ —$1.00
74.	Wichita, Kans.	114,966	153	25¢ or 35¢ 1st 1½ miles 10¢ each add. ½ mile 10¢ each add. passenger
75.	Wilmington, Dela.	112,504	80	Zone Rates: 35¢ 1st zone 65¢—2nd zone—for 1 passenger 20¢ each add. passenger
76.	Gary, Ind.	111,719	49	35¢ 1st ¾ mile 5¢ each add. ¼ mile
77.	Knoxville, Tenn.	111,580	175	25¢ 1st ⅓ mile 10¢ each add. ⅓ mile $4.00 per hr. wtg. time
78.	Cambridge, Mass.	110,879	150	25¢ 1st mile 10¢ each add. ⅔ mile
79.	Reading, Pa.	110,568	47	Zone Rates: 35¢—45¢—60¢
2551				
80.	New Bedford, Mass.	110,341	129	Zone Rates: Central zone 35¢ 1 or 2 passengers 50¢—1st outer zone 25¢ each add. zone per passenger $2.00 per hr. wtg. time
81.	Elizabeth, N. J.	109,912	90	Zone Rates: 50¢—75¢—$1.00
82.	Tacoma, Wash.	109,408	116	40¢ 1st 2/10 mile 10¢ each add. ½ mile 10¢ each add. passenger 10¢ each 3 min. wtg. time
83.	Canton, Ohio	108,401	60	25¢ 1st ½ mile 5¢ each add. ¼ mile 15¢ each extra passenger over two $3.00 per hr. wtg. time
84.	Tampa, Fla.	108,391	250	20¢ 1st ½ mile 10¢ each add. ½ mile 10¢ each 2½ min. wtg. time
85.	Sacremento, Cal.	105,958	155	Zone Rates: 40¢—65¢—90¢ —$1.15—$1.30
86.	Peoria, Ill.	105,087	87	35¢ 1st mile 10¢ each add. ⅓ mile
87.	Somerville, Mass.	102,177	75	20¢ 1st 1/6 mile 5¢ each add. 1/6 mile
88.	Lowell, Mass.	101,389	74	Zone Rates: 15¢—25¢—35¢
89.	South Bend, Ind.	101,268	81	25¢ 1st ½ mile 5¢ each add. ¼ mile
90.	Duluth, Minn.	101,065	40	35¢ 1st ½ mile 10¢ each add. ⅓ mile
91.	Charlotte, N. C.	100,899	178	Flat Rate: 50¢ 1 to 4 passengers—within city limits
92.	Utica, N. Y.	100,518	82	Zone Rates: 50¢ to $1.50 1 or 2 passengers 25¢ each extra passenger over two
93.	Waterbury, Conn.	99,314	22	30¢ 1st ½ mile 10¢ each add. ¼ mile 10¢ each 3 min. wtg. time

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No.	City	Population 1940 Census	No. of Licenses	Rate
94.	Shreveport, La.	98,167	55	35¢ 1st mile 10¢ each add. mile
95.	Lynn, Mass	98,123	52	25¢ 1st ½ mile 10¢ each add. ¼ mile
96.	Evansville, Ind.	97,062	110	Flat Rate: 50¢ within city limits
97.	Allentown, Pa.	96,904	44	Zone Rates: 25¢—35¢—50¢ $2.00 per hr. wtg. time
98.	El Paso, Texas	96,810	290	Zone Rates: 25¢—35¢—50¢ 75¢—$1.00—$1.50—$2.00— $2.50
99.	Savannah, Ga.	95,996	45	Zone Rates: 20¢ to 60¢ per person $2.50 per hr. wtg. time
100.	Little Rock, Ark.	88,039	106	Meter Cabs: Maximum 25¢ 1st mile 10¢ each add. ½ mile Minimum: 25¢ 1st mile 5¢ each add. ½ mile Zone Rates: 25¢ each zone within city limits
101.	Austin, Texas	87,930	189	"Various rates, according to posted fares determined by the taxicab owners."
102.	Schenectady, N. Y.	87,549	62	Zone Rates: 50¢—75¢— $1.00—$1.25—$1.50 for 1 or 2 passengers 25¢ each add. passenger over two
103.	Wilkes-Barre, Pa.	86,236	45	25¢ 1st ¾ mile 5¢ each add. ¼ mile $2.00 per hr. wtg. time
104.	Berkeley, Cal.	85,547	45	Max. Fare: 50¢ 1st mile 10¢ each add. 2/5 mile 10¢ each 2 min. wtg. time Min. Fare: 15¢ 1st ¼ mile 10¢ each add. ⅓ mile
105.	Rockford, Ill.	84,637	52	35¢ 1st ⅔ mile 10¢ each add. ½ mile 10¢ each 4 min. wtg. time

2553

106.	Lawrence, Mass.	84,323	86	Flat Rate: 7:00 A. M. to 11:00 P. M. 50¢ for 1 passenger 11:00 P. M. to 7:00 A. M. 75¢ for 1 passenger 25¢ each add. passenger anywhere in city limits
107.	Harrisburg, Pa.	83,893	40	25¢ 1st 3/5 mile 5¢ each add. 1/5 mile 5¢ each 2 min. wtg. time
108.	Saginaw, Mich.	82,794	50	25¢ 1st ½ mile 5¢ each add. ¼ mile
109.	Glendale, Cal.	82,582	38	20¢ per mile 5¢ each add. ¼ mile 25¢ 1st mile outside city limits; 50¢—2nd mile outside city limits 30¢ per mile beyond 2 miles

No.	City	Population 1940 Census	No. of Licenses	Rate
110.	Sioux City, Iowa	82,364	42	35¢ 1st mile 10¢ each add. ½ mile $2.00 per hr. wtg. time
111.	Lincoln, Nebr.	81,984	51	25¢ 1st mile 5¢ each add. ¼ mile 10¢ each 4 min. wtg. time
112.	Pasadena, Cal.	81,864	41	20¢ 1st ¼ mile 5¢ each add. ¼ mile $2.50 per hr. wtg. time
113.	Altoona, Pa.	80,214	13	25¢ 1st ⅓ mile 10¢ each add. ⅓ mile
114.	Winston-Salem, N. C.	79,815	120	Flat Rate; 35¢ $3.00 per hr. wtg. time
115.	Bayonne, N. J.	79,198	39	Flat Rate: 50¢ $3.00 per hr. wtg. time No charge in excess of 2 hours
116.	Huntington, W. Va.	78,836	70	Zone Rates: 25¢—35¢—50¢—65¢—75¢—$1.00
117.	Lansing, Mich.	78,753	63	35¢ 1st mile 10¢ each add. mile in city 30¢ mile outside city limits 10¢ each 4 min. wtg. time after 1st 4 minutes
2554				
118.	Mobile, Ala.	78,720	100	*Zone Rates:* 40¢—50¢—60¢—70¢—80¢—90¢—$1.00 15¢ each add. passenger over two $2.50 per hr. wtg. time *Meter Cabs:* 40¢ 1st 2 miles 10¢ each add. ½ mile 15¢ each add. passenger over two $2.50 per hr. wtg. time
119.	Binghamton, N. Y.	78,309	54	Flat Rate: 60¢ 1 to 4 passengers anywhere in city. 10¢ each add. passenger $2.50 per hr. wtg. time Out of Town Trips— 20¢ per mile—Both Ways
120.	Montgomery, Ala.	78,084	125	Three Companies: 25¢ 1st 1½ miles 10¢ each add. ½ mile One Company: Flat Rate: 25¢
121.	Niagara Falls, N. Y.	78,029	179	Zone Rates
122.	Manchester, N. H.	77,685	99	20¢ 1st ⅓ mile 10¢ each add. ⅓ mile 10¢ each add. passenger 10¢ each 3 min. wtg. time
123.	Quincy, Mass.	75,810	61	25¢ 1st 5/6 mile 5¢ each add. 1/6 mile $2.00 per hr. wtg. time
124.	Pawtucket, R. I.	75,797	160	35¢ 1st ¼ mile 10¢ each add. 4/10 mile

No.	City	Population 1940 Census	No. of Licenses	Rate
125.	St. Joseph, Mo.	75,711	72	35¢ 1st mile 10¢ each add. ½ mile 10¢ each 3 min. wtg. time
126.	East St. Louis, Ill.	75,609	115	Flat Rate: 10¢
127.	Springfield, Ill.	75,503	129	Zone Rates: 25¢—30¢—40¢—50¢—60¢ 10¢ each add. passenger $3.00 per hr. wtg. time
2555				
128.	Portland, Maine	73,643	59	20¢ 1st ⅓ mile 10¢ each add. ⅓ mile
129.	Charlestown, S. C.	71,275	227	50¢ 1st mile 40¢ each add. mile 25¢ each extra passenger 10¢ each 4 min. wtg. time
130.	Springfield, Ohio	70,662	41	30¢ 1st mile 5¢ each add. ¼ mile 25¢ each add. passenger
131.	Troy, N. Y.	70,304	31	Zone Rates: From 35¢
132.	Hammond, Ind.	70,184	23	35¢ per mile
133.	Newton, Mass.	69,873	128	50¢ 1st ¾ mile 25¢ each add. ½ mile
134.	Roanoke, Va.	69,287	101	25¢ 1st mile 10¢ 2nd mile 50¢ Maximum — anywhere in city
135.	Lakewood, Ohio	69,160	42	Flat Rate: 50¢ anywhere in city
136.	East Orange, N. J.	68,945	86	30¢ 1st ½ mile 10¢ each add. ¼ mile 10¢ each 3 min. wtg. time 20¢ each add. passenger
137.	New Britain, Conn.	68,685	10	20¢ 1st 2/5 mile 10¢ each add. 2/5 mile
138.	San Jose, Cal.	68,457	90	Zone Rates: 30¢—50¢—75¢
139.	Charleston, W. Va.	67,914	169	Zone Rates: 25¢ to $1.00
140.	Topeka, Kans.	67,833	38	35¢ 1st mile 10¢ each add. ½ mile
141.	Madison, Wis.	67,447	106	*Meter Cabs:* 25¢ 1st ½ mile 10¢ each add. ½ mile *Zone Rates:* 10¢ 1st zone 5¢ each add. zone
2556				
142.	Mt. Vernon, N. Y.	67,362	96	Flat Rate: - 50¢ 1 or 2 passengers 25¢ each add. passenger (From 1:00 to 5:00 A. M. 1½ times regular fare) $3.00 1st hr. wtg. time $2.00 each add. hour
143.	Racine, Wis.	67,195	70	Entire City: 30¢ Additional Stop—10¢ $3.00 per hr. wtg. time

No.	City	Population 1940 Census	No. of Licenses	Rate
144.	Johnstown, Pa.	66,668	17	35¢ 1st ½ mile 10¢ each add. ½ mile 5¢ each 2 min. wtg. time 40¢ per mile outside of city —One Way
145.	Pontiac, Mich.	66,626	50	25¢ 1st mile 10¢ each add. ½ mile
146.	Davenport, Iowa	66,039	26	Zone Rates: 35¢ to $1.00
147.	Oak Park, Ill.	66,015	30	20¢ 1st ½ mile 10¢ each add. ½ mile $2.50 per hr. wtg. time
148.	Augusta, Ga.	65,919	77	Zone Rates: 35¢—50¢—75¢ —$1.00 15¢ each add. passenger over two
149.	Phoenix, Ariz.	65,414	23	25¢ 1st ⅔ mile 10¢ each add. ⅓ mile
150.	Evanston, Ill.	65,389	206	20¢ 1st ⅓ mile 5¢ each add. ⅓ mile 5¢ each 1½ min. wtg. time 5¢ each extra passenger Minimum Charge for Telephone Order Service— 50¢
151.	Cicero, Ill.	64,712	61	20¢ Flag Drop 20¢ each mile thereafter
152.	Atlantic City, N. J.	64,094	250	50¢—1 passenger 75¢—2 passengers 10¢ each add. passengers
153.	Dearborn, Mich.	63,584	65	25¢ 1st ¼ mile 5¢ each add. ¼ mile 5¢ each 1½ min. wtg. time

2557

154.	Medford, Mass.	63,083	60	Minimum Rate: 35¢ 1st mile 5¢ each add. 1/5 mile
155.	Terre Haute, Ind.	62,693	104	35¢ 1st 1½ miles 5¢ each add. ¼ mile 30¢ a mile outside city
156.	Columbia, S. C.	62,396	357	Flat Rate: 40¢ 5¢ each add. passenger
157.	Brockton, Mass.	62,343	46	25¢ 1st ½ mile 25¢ each add. ½ mile
158.	Cedar Rapids, Iowa	62,120	50	35¢ 1st mile 10¢ each add. ½ mile 10¢ each extra passenger
159.	Jackson, Miss.	62,107	65	Flat Rate: 25¢
160.	Covington, Ky.	62,018	50	Zone Rates: 35¢—50¢—60¢ —75¢
161.	Passaic, N. J.	61,394	30	Flat Rate: 50¢ 25¢ each add. passenger over two $4.00 per hr. wtg. time
162.	Lancaster, Pa.	61,345	18	20¢ 1st ½ mile 10¢ each add. ⅓ mile
163.	Springfield, Mo.	61,238	80	Flat Rate: 25¢ per passenger in city Outside city—20¢ per mile

No.	City	Population 1940 Census	No. of Licenses	Rate
164.	Wheeling, W. Va.	61,099	32	Zone Rates: 25¢ per zone $3.00 per hr. wtg. time
165.	Galveston, Texas	60,862	97	25¢ 1st 2 miles 5¢ each add. ⅓ mile
166.	St. Petersburg, Fla.	60,812	105	Zone Rates: 15¢ 1st zone
167.	Fresno, Cal.	60,685	60	25¢ 1st 3/5 mile 10¢ each add. 2/5 mile 10¢ each 3 min. wtg. time
168.	Durham, N. C.	60,195	112	Flat Rate: 50¢ anywhere in city $3.50 per hr. wtg. time
2558				
169.	Greensboro, N. C.	59,319	175	Flat Rate: 35¢ 1 pass. 15¢—2nd passenger 10¢ each add. passenger over two
170.	Decatur, Ill.	59,305	35	35¢ 1st 1½ miles 10¢ each add. mile 5¢ each add. passenger over one
171.	Chester, Pa.	59,285	47	*Meter Cabs:* 35¢ 1st 1⅓ miles 10¢ each add. ⅓ mile *Zone Rates:* 35¢—45¢—55¢—65¢—75¢
172.	Beaumont, Texas	59,061	57	Zone Rates: 1st zone—25¢ per pass. 2nd zone—50¢ 1 or 2 passengers 25¢ each add. passenger 3rd zone—75¢ per pass. 50¢ each add. passenger
173.	Bethlehem, Pa.	58,490	23	15¢ 1st ¼ mile 5¢ each add. ¼ mile
174.	New Rochelle, N. Y.	58,408	127	35¢ 1st 3/5 mile 5¢ each add. 1/5 mile
175.	Malden, Mass.	58,010	63	40¢ 1st mile 10¢ each fraction of mile
176.	Macon, Ga.	57,865	46	Zone Rates: From 25¢
177.	Corpus Christi, Texas	57,301	165	30¢ 1st mile 10¢ each add. ½ mile
178.	Arlington County, Va.	57,040	45	30¢ per mile $2.00 per hr. wtg. time
179.	Upper Darby Twp., Pa.	56,883	—	20¢ 1st ¼ mile 5¢ each add. ¼ mile 5¢ each 2 min. wtg. time
180.	York, Pa.	56,712	22	25¢ 1st mile 5¢ each add. ¼ mile
181.	Union City, N. J.	56,173	48	50¢ 1st mile 40¢ each add. mile
2559				
182.	Waco, Texas	55982	71	25¢ per passenger, Min. 50¢ per passenger cross town trip.
183.	McKeesport, Pa.	55,355	28	15¢ 1st 1/5 mile 5¢ each add. 1/5 mile

No.	City	Population 1940 Census	No. of Licenses	Rate
184.	Irvington, N. J.	55,328	27	35¢ 1st mile 30¢ each mile thereafter
185.	Cleveland Hts., Ohio	54,992	36	Flat Rate: 50¢ anywhere in city
186.	Stockton, Cal.	54,714	45	25¢ 1st ⅓ mile 10¢ each add. ⅓ mile 10¢ each add. passenger $3.00 per hr. wtg. time
187.	East Chicago, Ill.	54,637	17	45¢ 1st mile 30¢ each add. mile
188.	Kalamazoo, Mich.	54,097	55	25¢ 1st mile 35¢ anywhere in city limits 10¢ each add. passenger 10¢ each 4 min. wtg. time after 1st 4 minutes
189.	Holyoke, Mass.	53,750	12	40¢ 1st ¼ mile 10¢ each add. ¼ mile
190.	Santa Monica, Cal.	53,500	29	20¢ 1st mile 10¢ each add. ½ mile
191.	Columbus, Ga.	53,280	218	Flat Rate: 25¢ per passenger in city 20¢ per mile or fraction outside city
192.	Pueblo, Colo.	52,162	30	25¢ 1st ¼ mile 10¢ each add. ¼ mile
193.	Waterloo, Iowa	51,743	26	25¢ 1st ½ mile 35¢—1½ miles 10¢ each add. ½ mile 10¢ each add. passenger 10¢ each 4 min. wtg. time
194.	Amarillo, Texas	51,686	102	*Zone Rates:* 1st zone—35¢ 2nd zone—50¢ 25¢ each add. passenger *Meter Cabs:* 35¢ 1st 2 miles 5¢ each add. ¼ mile $3.00 per hr. wtg. time 10¢ each add. passenger
195.	Asheville, N. C.	51,310	125	Zone Rates: 50¢—75¢—$1.00—$1.25
196.	Highland Park, Mich.	50,810	25	25¢ 1st ¼ mile 5¢ each add. ¼ mile 5¢ each 1½ min. wtg. time
197.	Portsmouth, Va.	50,745	44	35¢ 1st mile 10¢ each add. ½ mile
198.	Hamilton, Ohio	50,592	25	30¢ 1st ½ mile 5¢ each add. ¼ mile 10¢ each 3 min. wtg. time 25¢ each add. passenger over one
199.	Hoboken, N. J.	50,115	33	15¢ 1st 1/6 mile 5¢ each add. 1/6 mile

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No.	City	Population 1940 Census	No. of Licenses	Rate
	CANADA			
	London, Ont.	78,264	95	35¢ 1st mile 10¢ each add. ½ mile 10¢ each add. passenger over four
	Montreal, Canada	903,007	3,100	25¢ 1st ¼ mile 5¢ each add. ¼ mile
	Toronto, Canada	667,457	800	40¢ 1st mile or fraction thereof 10¢ each add. ½ mile 10¢ each 3 min. wtg. time
	Winnipeg, Manitoba	221,960	388	35¢ 1st mile 5¢ each add. ¼ mile

2562 *Defendant's Exhibit D-16*

PARMELEE TRANSPORTATION COMPANY

Incorporated under the Laws of the State of Delaware

CERTIFICATE OF INCORPORATION

Filed April 12, 1929

* * *

7. If the Corporation shall be in default in respect of the declaration and payment of full cumulative dividends on the preferred stock for eight quarterly dividend periods, then and in every such case the holders of the preferred stock, until such default shall have been cured by the payment of all the dividends accrued or in arrears, shall have the right, voting as a class, to vote for and elect one-third of the entire Board of Directors of the Corporation or, if at the time of such election the number of directors constituting the entire Board of Directors shall not be a multiple of three, the integral number next larger than one-third of the entire Board of Directors, at all meetings of the stockholders for the election of directors. If all such dividends accrued or in arrears shall be paid by the Corporation at any time, then and thereupon the power given to the holders of the preferred stock to vote as in this paragraph provided shall cease, subject, however, to being again revived upon any such subsequent default of the Corporation in respect of eight quarterly dividend periods to declare and pay full cumulative dividends on the preferred stock.

Whenever the holders of record of the preferred stock voting separately as a class shall become entitled to elect the number of directors aforesaid, a special meeting of the stockholders may be called by, or on the written request of, the holders of not less than ten per cent (10%) in amount of the preferred stock at the time outstanding, to be held on not less than twenty (20) days' notice given in the manner which shall be prescribed by law or by the by-laws of the Corporation for giving notice of an annual meeting. At such special meeting, or in case such special meeting shall not be called and the default giving rise to such right of election shall not have been cured as aforesaid prior to the time of the next succeeding annual meeting of stockholders, then at such annual meeting, the terms of office of the then directors of the Corporation, upon the election of their successors, shall cease and the holders of record of the preferred stock, voting separately as a class, shall have the right to elect the number of directors aforesaid, and the

holders of record of the common stock shall have the right to elect the remainder of the directors. At each meeting of the stockholders for the election of one or more directors held after any such special or annual meeting and until any such default shall have been cured as aforesaid, each director to be elected shall be elected by the holders of record at that time of the class of shares by the voting of which his predecessor was elected. Whenever the right herein given to the holders of record of the preferred stock, voting separately as a class, to elect directors of the Corporation shall cease as hereinbefore provided, a special meeting of the stockholders may be called by, or on the written request of, the holders of not less than ten per cent. (10%) in amount of the common stock at the time outstanding, to be held on not less than twenty (20) days' notice given in the manner which shall be prescribed by law
2563 or by the By-laws of the Corporation for giving notice of an annual meeting. At such special meeting, or in case such special meeting shall not be called and no additional default entitling the holders of record of the preferred stock, voting separately as a class, to elect the number of directors aforesaid, shall have occurred prior to the time of the next succeeding annual meeting of stockholders, then at such annual meeting the terms of office of the then directors of the Corporation, upon the election of their respective successors, shall cease and a new Board of Directors shall be elected by the holders of record of the common stock.

8. Except as otherwise provided in paragraphs 6 and 7 of this Article Fourth, or as otherwise made mandatory by law, the holders of record of the common stock shall exclusively possess voting power for the election of directors and for all other purposes, and the holders of the preferred stock shall have no voting power.

2564 *Defendant's Exhibit D-17*

SUPREME COURT OF ILLINOIS

Yellow Cab Company *et al.*, Appellees, v.
The City of Chicago *et al.*, Appellants.

Docket No. 29686—Agenda 28—November, 1946.

Mr. JUSTICE FULTON delivered the opinion of the court:

This is an appeal from the action of the circuit court of Cook county, granting to appellees a permanent injunction restraining appellants from cancelling or causing to be cancelled any taxicab licenses of appellees pursuant to

notices given to appellees by the public vehicle license commissioner of the city of Chicago as directed by resolution of the city council of the city of Chicago. Said injunction also restrained appellants from issuing or causing to be issued any permits or licenses pursuant to a resolution, order or ordinance of the city council of the city of Chicago, passed January 16, 1946, and restrained appellants from issuing any permits or licenses in excess of the total number of 3000 without first holding hearings with respect to the public convenience and necessity therefor and without first affording appellees an opportunity to apply for and obtain such licenses to the number thereof provided for in a previous ordinance of the city council, passed on December 22, 1937.

The validity of certain ordinances of the city of Chicago is challenged by the parties in this cause and the trial judge has certified that the public interest requires the appeal be taken directly to this court in view of the questioned validity of these municipal ordinances.

For a proper consideration and determination of the issues in this case it is necessary to review the action of the city of Chicago and of the appellees regarding the
2566 operation of taxicabs in that city during the past fifteen years. On May 18, 1934, the city council passed a comprehensive ordinance to regulate the operation of taxicabs in the city of Chicago. This ordinance provided for the issuance of licenses to operate taxicabs in the city for a term ending December 31, 1940, unless sooner terminated or revoked as provided in the ordinance. The ordinance provided for the payment of license fees and the establishment of taxicab rates to be charged uniformly by all taxicabs, limited the number of passengers to be carried in each cab, required the payment of judgments rendered for personal injury, property damage or wrongful death against any licensee, limited the hours of work of each driver and contained other provisions designed for the protection of the citizens of the city of Chicago. The ordinance also contained a provision that no licenses should be subsequently authorized except upon transfer to permit replacement of the taxicabs or in the annual renewal of such licenses unless the commissioner, after a hearing, found that public convenience and necessity required additional taxicab service. No new licenses could be issued to any licensee unless he accepted this ordinance. This comprehensive ordinance also established a basis for making a determination as to the necessity and public convenience requiring licensing of

additional taxicabs and provided that in the event of discontinuation of service of any taxicab excepting on account of strikes, acts of God, or anything beyond the control of the licensee the commissioner might give notice to the licensee to restore such taxicabs to service and the failure to restore such service within five days after notice would give the commissioner the discretion to recommend to the mayor that the license be revoked and the mayor in his discretion might revoke the same. This ordinance provided that it should be in full force and effect from and after its passage, if one or more persons, firms, or corporations operating taxicabs should within 60 days, file with the city clerk formal written acceptance of the same. Both appellees filed acceptances thereof.

2567 Based upon this ordinance, 4108 taxicab licenses were issued in the city of Chicago. The Yellow Cab Company received 2166 licenses and the Checker Taxi Company received 1500 licenses. Subsequent operation of taxicabs in the city of Chicago resulted in unprofitable operations from the standpoint of the drivers and the licensees, resulting in strikes and other violence on the city streets, and in 1937 it was determined that a reduction in the number of taxicabs operated in the city and an increase in the fares charged was in the public convenience and necessity. Thereafter on December 22, 1937, the city council passed an ordinance providing for a method of voluntary surrender by licensees of enough of their licenses to reduce the total from 4118 to 3000. This ordinance provided that in the event the number of authorized licenses should later be increased above the 3000 figure said licenses, to the number surrendered, should first be issued to licensees ratably in proportion to the number voluntarily surrendered by each licensee. The ordinance likewise provided that authority of the licensees to operate taxicabs under the 1934 ordinance be extended to December 31, 1945, provided the licensees accepted the terms of the 1937 ordinance.

The Yellow Cab Company voluntarily surrendered 571 of its licenses and the Checker Taxi Company surrendered 500 of its licenses. Other licensees surrendered the balance of the required reduction. The appellees and other licensees continued to operate under this 1937 ordinance. The evidence shows that in 1940 and in 1941 appellees replaced their taxicab fleets in the city with new equipment, but since that time due to economic restrictions occasioned by World War II they have been unable to obtain new equipment customarily used by them for taxicab purposes. The

evidence shows that the average life expectancy of a taxicab in the city of Chicago is about three years and that those operated in the city by appellees at the time of the hearing in this case have exceeded their life expectancy by more than 1½ years.

2568 With the end of the war it was thought that appellees and others would be able to replace their taxicab fleets with new equipment and on June 21, 1945, the city council passed an extension ordinance extending the term of the ordinance of 1937 for five years, ending December 31, 1950. This action of the city council was preceded by pledges made to the city by appellees that they would replace their fleets with new equipment as soon as possible.

On December 28, 1945, the city council passed a resolution reciting that demands for all forms of local transportation had increased on account of World War II and directed the commissioner to enforce the provisions of the 1937 and 1945 ordinances by compelling full operation of 3000 taxicabs in the city by January 15, 1946. In the event that full operation of said taxicabs could not be accomplished, the commissioner was authorized to take steps for licensing additional taxicabs in the city.

On January 16, 1946, the city council passed the following: "ORDERED, That the Public Vehicle License Commissioner be and he is hereby authorized and directed to issue two hundred fifty (250) permits for the operation of taxicabs, and that ex-servicemen be given preference in the issuance of such permits; such permits to be issued only to individuals and to be distributed generally through the city." On January 22, 1946, the commissioner addressed a letter to each of the appellees advising them that his office had surveyed their records and that the Yellow Cab Company had 234 taxicabs and the Checker Taxi Company had 87 taxicabs which had not been operating. He directed that they be placed in operation within five days or the licenses for said cabs would be cancelled.

Appellee Yellow Cab Company filed its complaint for injunction on January 24, 1946. Subsequently, appellee Checker Taxi Company was given leave to appear as a plaintiff. In their complaints as amended, appellees alleged the existence of the various ordinances and actions by the city council and the public vehicle license commis-

2569 sioner, and in addition, alleged that they had invested several million dollars in taxicab equipment, real estate and property; had acquired contract rights; had complied with all ordinances; had given up licenses under the

1937 ordinance, and had ordered new fleets of taxicabs, relying on their contract rights. They also alleged that the action of the defendants in attempting to cancel their licenses and to issue additional permits, interfered with and violated their contract rights secured to them by the State and Federal constitutions, and would cause irreparable harm, injury and damage to their goodwill, business and investments, and that they had no adequate remedy at law.

The defendants filed a motion to dismiss the complaints and also filed answers to the complaints and amendments thereto. By these pleadings the defendants contended that the complaints were filed prematurely; that no cause of action existed at the time of filing the complaints; that a court of equity had no jurisdiction to restrain a legislative body from exercising its governmental or legislative functions; that the ordinances of 1934, 1937 and 1945, are void; that the city of Chicago does not have authority to prohibit, exclude or limit the number of motor vehicles for hire upon the streets without equal application to all citizens; that said ordinances in effect grant an absolute monopoly denying to all citizens the equal protection of the laws and are contrary to the public policy of the State of Illinois, and constitute class legislation; that said ordinances delegate legislative powers to unnamed individuals to arbitrarily determine if said ordinances would become a law at sometime in the future, and that said ordinances are *ultra vires*, because the city attempted to part with or abdicate its legislative and governmental powers.

After a hearing, the court enjoined the defendants as above set forth. From the evidence it appears that the appellees are unable to operate 321 taxicabs by reason of their inability to obtain repairs and replacement parts for said vehicles. This inability has been occasioned by
2570 the economic restrictions incident to World War II and is beyond the power of appellees to remedy. Appellees operate only vehicles which have been specially constructed for taxicab service and do not use conventionally designed passenger automobiles. It further appears that appellees have made some effort to obtain standard passenger automobiles to replace their fleets, but that in the opinion of appellees and expert witnesses familiar with the maintenance of taxicab fleets, the use of conventionally designed automobiles would be impractical since it would complicate the maintenance of the taxicab fleets inasmuch as parts of one taxicab would not be interchangeable with other taxicabs and mechanics trained to service one make

of vehicle could not satisfactorily and economically repair and service other makes of vehicles. It further appears that there are many individuals in the city of Chicago who have obtained on the open market conventionally designed passenger cars which they have converted to suitable taxicab use. It further appears that there are certain advantages to the operation of taxicabs of special construction since they have many specially designed features for the safety, convenience and enjoyment of the passengers, and for easier operation on the public streets. Certain of these features are extra heavy frames, specially constructed bodies, specially designed brakes and steering mechanism, finger guards on door hinges, specially padded partition, specially designed wheels, tires, ventilators and other features. Their weight is approximately 1000 pounds more than the average passenger car.

The appellants contend in this court that:

1. The trial court has no jurisdiction to enjoin the exercise of the legislative, governmental, and discretionary functions of the city council and public officials.

2. The resolution of the city council requiring 3000 taxicabs be put into service on or before January 15, 1946, is a valid and proper exercise of the legislative function of the city council.

2571

3. The ordinance of January 16, 1946, authorizing and directing the public vehicle license commissioner to issue 250 permits for operation of taxicabs in the city of Chicago is valid and is a proper exercise of the legislative power of the city council.

4. The ordinances of the city of Chicago of May 18, 1934, December 22, 1937, and June 21, 1945, providing for the issuance of licenses and regulation of the taxicab business in the city of Chicago are null and void.

The appellees contend that the action of the trial court should be affirmed for the following reasons:

The inoperability of 321 taxicabs was beyond the control of appellees and, therefore, no action could be taken by appellants toward the cancelling of such licenses.

2. The action of the city council of January 16, 1946, in authorizing and directing the issuance of 250 permits for the operation of taxicabs in the city of Chicago is void because there is no finding that public convenience and necessity required the issuance of additional taxicab licenses; the ordinance is vague and uncertain, it is discriminatory, does not afford appellees the right to apply for permits or licenses in excess of the 3000 as guaranteed by

the 1937 ordinance, and it violates and ignores appellees' contract rights secured by the Federal and State constitutions.

3. The ordinances of 1934, 1937 and 1945 are all valid and constitute binding contracts between the city and appellees.

As to the contention that the trial court had no jurisdiction to grant the injunction in this case on the ground that it interfered with the exercising of legislative,
2572 governmental and discretionary functions of the city council, we cannot agree. Appellees have not sought to enjoin the city council from acting upon the question of taxicabs and their regulation. Appellees have merely sought to enjoin the city and its officials from taking action based upon ordinances or resolutions of the city council which appellees contend are invalid. The case of *Fletcher* v. *City of Paris*, 377 Ill. 89, cited by appellants and relied upon heavily by them, is authority for the proposition that equity cannot enjoin the holding of an election for the adoption of an ordinance nor can equity enjoin the passage of legislation, inasmuch as the holding of an election is the exercise of a political right and equity will not interfere in a case affecting the enjoyment of political rights where the holding of an election is a necessary step in the legislative process of adopting and bringing into existence a municipal ordinance. Likewise that case holds that inasmuch as the judiciary has no supervision of the legislative branch of the government, courts will not enjoin the passage of legislation, since the restricting power of courts is against the enforcement rather than the passage of unauthorized orders, resolutions or ordinances of municipal corporations. In the case at bar the injunction does not restrict the city council from enacting such ordinances or resolutions as it might care to regarding the regulation of taxicabs in the city of Chicago. It merely restricts the action of the city and the license commissioner, the city clerk and the mayor from taking certain action in the nature of enforcing ordinances or resolutions previously adopted by the city council.

Appellees in this case could properly maintain this action since they are in immediate danger of sustaining direct injury as a result of the enforcement and carrying out of the resolutions of the city council of December 28, 1945, and January 16, 1946. *Fletcher* v. *City of Paris*, 377 Ill. 89.

2573 We cannot agree with appellants' contention that the city of Chicago cannot limit or restrict the number of taxicabs which are to be operated upon the streets of the city of Chicago. In the case of *People ex rel. Johns* v. *Thompson*, 341 Ill. 166, this court had before it for consideration the validity of an ordinance regulating taxicabs, passed September 25, 1929, which contained provisions similar in many respects to the ordinances of 1934, 1937 and 1945, the validity of which are questioned in this proceeding. In that case we upheld the validity of that ordinance and we stated, "The ordinance is not discriminatory on the ground that it singles out taxicabs for regulation and does not apply to private vehicles or other public vehicles drawn by horses. No one has any inherent right to use the streets or highways as a place of business. Where one seeks a special or extraordinary use of the streets or public highways for his private gain, as by the operation of an omnibus, truck, motorbus or the like, the State may regulate such use of the vehicle thereon or may even prohibit such use." We also held in that case that the power of the city to pass the ordinance in question had been authorized under the Cities and Villages Act then in force. We likewise held that the right to regulate includes the right to impose reasonable conditions and restrictions and that the power to regulate the use of streets by vehicles included the power to promote the general welfare and prevent accidents, and that the reasonableness of police regulation is not necessarily what is fairly appropriate under all circumstances. Certainly, the city of Chicago, having the right to regulate traffic and parking, to build bridges, viaducts, tunnels and sewers, to select streets for through or local traffic, to levy a city vehicle tax, to provide for the underground laying of wires or other facilities in the street and to provide for the general policing of the city, could, in the exercise of its powers conferred upon it by the legislature, property determine the number of taxicabs which it would permit to
2574 be operated in the city of Chicago. Any conclusion other than this would render ineffective the authorizations by the legislature to the city for the regulation of traffic and parking and the policing of the city. It is well known and this court takes judicial notice of the facts that there are numerous congested areas in the city of Chicago and that the very nature of the taxicab business contributes to this traffic congestion.

Appellants contend that the ordinances of 1934, 1937 and 1945, providing for the regulation and licensing of taxicabs

in the city of Chicago, are invalid since such ordinances create, or attempt to create, a monopoly in the taxicab business in the city of Chicago. A careful study of the record indicates that at the time of the hearing in this cause there were 348 persons, firms or corporations, including appellees, holding licenses for the operation of 3,000 taxicabs in the city of Chicago. It is true that the vast majority of the 3,000 licenses are held by appellees, however no taxi operator and no person who desires to enter the taxicab business has, in this cause, complained of a monopoly. By these ordinances which are said to create a monopoly the city has reserved the right to fix fares and has the right to inspect the books and records of the various licensees. In addition, the city has reserved the right to issue, when authorized by general ordinance, additional licenses for the operation of taxicabs without the consent of any of the licensees. The sole restriction upon the city's right to issue additional licenses is that there shall be a finding of public convenience and necessity for the additional licenses. In the case of *Capitol Taxicab Co.* v. *Cermak*, 60 F. 2d 608, involving a similar ordinance, the court stated, "To the argument that the ordinance tends to create a monoply, it is sufficient to answer that the city has not by its legislation surrendered its right to grant other and further certificates to all other applicants."

2575 In the case at bar it is contended that the proviso contained in section 2 of the 1937 ordinance restricts the right of the city to issue additional taxicab licenses only to appellees. Section 2 of the ordinance of 1937 provides, "Notwithstanding Section 1 of this ordinance taxicab licenses in excess of 3,000 may be issued when authorized by general ordinance without consent of licensees under the ordinance of May 18, 1934; provided that such licensees who shall have voluntarily surrendered any taxicab licenses or their right to renewal of any taxicab licenses on or before March 31, 1938, shall have the right to such number of taxicab licenses as were so surrendered, and such right shall be prior to the right of any person, firm or corporation until such licensees who have so surrendered their taxicab licenses shall have either released their right to apply for taxicab licenses or shall have failed to make application therefor within thirty (30) days after publication of notice of public hearing upon the question of public convenience and necessity for the issuance of licenses for taxicabs as provided by ordinance."

The ordinance of 1937 was a general ordinance of general application and merely attempted to provide a method for meeting the difficulties incident to the operation of taxicabs resulting from a period of economic depression. This ordinance was passed for the purpose of establishing proper regulation for the taxicab business in the city of Chicago during a critical period. Anyone holding a taxicab license could have surrendered the same and would have been given protection in regaining the license as afforded by this ordinance. It should be borne in mind that at the time the 1937 ordinance was passed, all taxicab licenses in the city of Chicago did not expire until December 31, 1940, and, therefore, the city of Chicago could not legally at that time reduce the number of taxicab licenses in the city by general ordinance. Conditions demanded that the number of licenses be reduced immediately and in order to secure their reduction, this ordinance granting
2576 a preference to people who voluntarily surrendered licenses was enacted. The proviso giving to licensees surrendering taxicab licenses the right to regain their licenses, when the city of Chicago determines that additional licenses are to be authorized, merely gives to those people a preference for the period of 30 days after the publication of notice of public hearing upon the question of public convenience and necessity. Should these former licensees fail to apply for licenses within that 30-day period, then any one who desires to engage in the taxicab business can obtain a license providing he meets the general requirements of the ordinance. It is clear that no exclusive right to operate taxicabs has been granted to any person or corporation in express terms. The fact that appellees may be the only persons who surrendered taxicab licenses and are, therefore, the only persons entitled to the preference does not render the ordinance void, since the ordinance is of general application and since the preference in obtaining additional licenses is given only for a limited time and is based upon a valuable consideration. The city council of the city of Chicago, in the exercise of its legislative discretion, could well have determined that this ordinance was a proper exercise of its police power for the regulation of the taxicab business and the regulation of the traffic and congestion upon its streets. It is not the province of this court to inquire as to the wisdom of passing the ordinance. As long as the same does not violate any constitutional limitation, it is a valid enactment, though the courts might disagree with the wisdom of its provisions.

Appellants have also contended that the ordinances of 1934, 1937 and 1945 do not constitute contracts between the city and the operators of taxicabs, on the ground that the ordinances only confer a license and do not grant a franchise. A review of the authorities indicates that the distinction between a license and franchise has developed mainly by reason of the difference in the type of business performed. In the case of public utilities, almost
2577 without exception, the grant of authority to them to conduct business within the limits of a city is referred to as a franchise. On the other hand, the right of a theatre, garage, restaurant, bowling alley and other businesses to engage in business is referred to as a license. Counsel have pointed out in great detail the distinction between franchises and licenses and have based much weight upon the fact that in a franchise the holder thereof can be compelled to operate his business while in the case of a license the licensee cannot be compelled to operate his business against his will. However, a review of the authorities in other States indicates that the terms "license" and "franchise" have been used often synonymously and that each State has a somewhat different meaning for the two terms.

The question to be determined in the case at bar is whether or not a licensing ordinance can constitute a contract between the city and the licensees. It is the opinion of this court that the licensing ordinances in the case at bar did create a contract between the city and the licensees. In the case of *Peoria Railway Co.* v. *Peoria Railway Terminal Co.*, 252 Ill. 73, we hold that the privilege to use the streets of a city having been granted by an ordinance was not recoverable at the will of the city after it had been accepted by the licensee. We also held that where the license had been acted upon in a substantial manner and the revocation thereof would be inequitable, the same could not be revoked. This court in the case of *American Car Co.* v. *Emerson*, 288 Ill. 289, held that a license granted to a foreign corporation to do business in the State of Illinois constitutes a contract between the foreign corporation and the State of Illinois. It being the opinion of this court that the ordinances granting licenses to appellees and others operating taxicabs in the city of Chicago constitute a valid contract between appellees and the city of Chicago, and it being the opinion of the
2578 court that such ordinances are not illegal as being beyond the power of the city to enact, we pass to the question of the delegation of power under the ordi-

nances and we find that the delegation of power to the commissioner herein is not illegal. In the case of *People v. Thompson*, 341 Ill. 166, we considered the delegation of power under a similar ordinance regulating taxicabs in the city of Chicago and held that such delegation was proper. The only material difference between the provisions of the ordinance there questioned and the ordinances here, as to the delegation of power, is that in that case the power was given to a commission. We do not regard this difference as being material, inasmuch as proper standards for the action of the commissioner have been established by the ordinances.

Appellants have also contended that the action of the chancellor in holding invalid the order of the city council of January 16, 1946, authorizing the issuance of 250 taxicabs "permits," should be reversed. It is the opinion of this court that this action of the chancellor should likewise be affirmed. In view of the previous finding by the city that public conveniences and necessity required the operation of 3000 taxicabs in the city of Chicago, and in view of appellees' admitted inability to keep all of their taxicabs in operation, due to conditions beyond their control, the city could properly provide for the issuance of temporary permits during a critical period when it was impossible to keep in operation all of the taxicabs theretofore licensed. However, the operation of such additional taxicabs authorized by the city council to bring the total number of cabs in operation to the necessary 3000 should be subject to the conditions of the general ordinance regulating the taxicab business in the city of Chicago. Certainly, the temporary permittees should be compelled to charge the same fares, submit to the same regulation and abide by the same safety precautions as provided in the general ordinance. The action of the city council of Janu-
2579 ary 16, 1946, does not in any way attempt to bring the temporary permittees under the same regulation as other taxicabs operating in Chicago, nor does this action provide for a termination of these permits when taxicab licensees are able to furnish the service which public convenience and necessity requires. The chancellor properly held this action of the city council invalid.

Appellees have raised many other arguments as to the validity and the propriety of the chancellor's action, which have received careful consideration, but, in view of our decision on the points heretofore discussed, it would serve no useful purpose to further lengthen this opinion by a

piecemeal discussion thereof. For the reasons which we have heretofore stated, the decree of the circuit court of Cook county is affirmed.

Decree affirmed.

2580 *Defendant's Exhibit D-18*

CITY OF CHICAGO
Department of Law
511 City Hall

September 11, 1945

Hon. Bryan Hartnett
Chairman, Subcommittee on Taxicabs,
Committee on Local Transportation

Dear Sir:

We have your letter of August 28, 1945 requesting an opinion as to the power of the City Council to repeal the ordinance passed June 26, 1945 (Coun. J. 3743) which in effect extends the terms of the grant by the City Council for the operation of taxicabs within the city until December 31, 1950.

That ordinance purports to amend Section 4 of the ordinance relating to taxicab licenses passed December 22, 1937 (Coun. J. 5027) which, in turn, extended the original grant of authority to operate taxicabs on city streets to December 31, 1945.

In the year 1933 the taxicab business in the city of Chicago was chaotic. Vacant taxicabs were cruising the streets for passenger business. The cost of taxicab operations was excessive because of the large percentage of dead mileage. Individual operators and drivers employed by corporate operators were unable to make a decent living because of the keen competition and a war of cutting rates of fare to attract business caused congestion of the streets, endangered taxicab passengers and others making ordinary use of the streets and created such disorder as to require police intervention.

2581 On June 28, 1933 the City Council passed an ordinance establishing a new Public Vehicle License Commission composed of the Commissioner of Police, the City Comptroller and the Corporation Counsel and also passed resolutions directing the new commission to investigate the question of just and proper rates of fare and the number of taxicabs that should be licensed in the City of Chicago, with directions that the Commission report its findings and recommendations to the City Council (Coun. J. 642).

That commission, after many public hearings and examination of taxicab operators, their books and records, and testimony of applicants for licenses to operate taxicabs, reported to the City Council on April 27, 1934 (Coun. J. 2069). It recommended the issuance of 4,108 taxicabs licenses for the year 1934 and the establishment of a uniform schedule of meter rates for all taxicabs operated in the city; also, that provision be made for the appointment of a committee independent of any other department of city government with all necessary specific powers to regulate and control the taxicab business in Chicago.

To carry out the recommendations of the commission the City Council on May 18, 1934 passed an ordinance granting permission and authority for the operation of taxicabs within the city and for the appointment of a Public Vehicle License Commissioner (Coun. J. 2271). In substance the ordinance was an offer to the owners of licensed taxicabs to furnish public service subject to its conditions and limitations for a term ending December 31, 1940. By formal written acceptance of the ordinance the licensee, in consideration of the right to use the streets for private gain in the operation of taxicabs, was obligated to pay compensation for the use of the streets (Section 3) agreed to abide by a temporary schedule of rates and charges uniform as to all taxicabs operated within the city (Section 4): agreed to pay all final judgments or awards in sixty
2582 days; agreed not to work or employ any person to work as a driver for more than twelve out of twenty-four consecutive hours (Section 4); agreed to operate every licensed taxicab regularly to the extent reasonably necessary to meet the public demand for taxicab service (Section 7); and agreed to keep in the city complete and accurate books and records and to file statements of its assets, liabilities, gross earnings and operating expenses and other information as required for the purpose of enabling the City to keep informed as to the character and quality of service rendered and just and uniform reasonable rates of fare to be fixed from time to time by the Council (Section 8). To protect the licensees against unreasonable competition the City agreed not to issue any license for a taxicab unless the commission, after a public hearing, by resolution should declare that public convenience and necessity required additional taxicab service (Section 6).

More than five years before, the City Council of Chicago had passed an ordinance which provided that no taxicab

license should be issued unless the Public Vehicle License Commission should declare that public convenience and necessity required the proposed taxicab service. In *The People* v. *Thompson*, (1930) 341 Ill. 166, our Supreme Court upheld the ordinance as a proper exercise of the police powers of the State delegated to the City Council. At page 160 the court said:

> "* * * No one has any inherent right to use the streets or highways as a place of business. Where one seeks a special or extraordinary use of the streets or public highways for his private gain, as by the operation of an omnibus, truck, motorbus or the like, the State may regulate such use of the vehicle thereon or may even prohibit such use."

In considering the effect of that ordinance the United States District Court for the Northern District of
2583 Illinois in *Capitol Taxicab Co.* v. *Cermak*, (1932) 60 F. (2d) 608, before a court consisting of three judges, Circuit Judge Page and District Judges Lindley and Woodward, said;

> "To the argument that the ordinance tends to create a monopoly, it is sufficient answer that the city has not by its legislation, surrendered its right to grant other and further certificates to all other applicants. It may still grant applications, and undoubtedly adequate remedy exists against affirmative exercise of arbitrary authority in that respect. The public policy of Illinois has been declared by the Legislature of Illinois, according to the interpretations of the Supreme Court, to be that, before one utility or public carrier is permitted to enter the business of another already in the field, it is but a matter of fairness and justice that it be shown that the new utility answers the demands of public convenience and necessity."

In *City of Chicago* v. *Eagle Taxi Co., et al.*, (1933) 273 Ill. App. 614, the validity of the same ordinance was involved. The City instituted suit to restrain the company and individual operators or chauffeurs from operating taxicabs as public passenger vehicles for hire upon the streets of Chicago without public vehicle licenses. Thirty-five persons had made application October 24, 1933 for public vehicle licenses claiming to be the owners of taxicabs and immediately after filing their applications and before the Public Vehicle License Commission had an opportunity to consider the applications in accordance with the provi-

sions of the city ordinances proceeded to operate or cause to be operated for hire the taxicabs described in their applications. The City of Chicago caused arrests to be made of numerous chauffeurs of the taxicabs for operating them without licenses. Despite such arrests, immediately after their release from custody on bonds and pending the trial of their cases the chauffeurs resumed the operation of the taxicabs and threatened to continue such
2584 operation in violation of the ordinances and in defiance of the requirements of the City of Chicago and of its Public Vehicle License Commission. Thereafter, the individual defendants withdrew their applications for license and October 28, 1933 defendant Eagle Taxi Company filed application for licenses for the same taxicabs claiming to be the owner of them. The company proceeded to operate without having first secured public vehicle licenses in violation of the ordinances of the City of Chicago and in defiance of it and of its Public Vehicle License Commission. The Circuit Court of Cook County entered an order granting to the City of Chicago a temporary injunction restraining defendants from operating these taxicabs on the streets without public vehicle licenses as provided by ordinance. An appeal from this injunction was taken to the Appellate Court and that court upheld the right of the City to prohibit that operation, citing *The People ex rel.* v. *Thompson* and *Capitol Taxicab Co.* v. *Cermak, supra*, as to the validity of the ordinance, and then said:

> "Under the circumstances disclosed we are constrained to hold that the legal remedy of complainant of prosecuting the offending chauffeurs of defendants' taxicabs for their persistent and continued violations of the ordinances was inadequate, and that a court of equity was fully justified in exercising its jurisdiction to the end that the city might be afforded complete and adequate relief. There can be no question but that the operation of the taxicabs in the manner described in the bill in contempt and disregard of the ordinances of the City of Chicago constituted a public nuisance on the city's streets."

The opinion of the court is not reported in full in the Illinois Appellate Court Reports. The facts involved and the above quotation were taken from the original opinion filed in this case December 29, 1933.

2585 Although the City Council has authority to declare the public policy in regard to operation of a public

service facility within the city and to determine whether such operation shall be competitive or monopolistic (*Venner* v. *Chicago City Ry. Co.*, (1913) 258 Ill. 523, 546) the ordinance of May 18, 1934 did not grant exclusive rights to any person, firm or corporation to operate taxicabs upon the streets. It expressly reserved the right to pass all ordinances and make all regulations affecting the licensees to promote or secure health, safety, morals, comfort, convenience and general welfare (Section 6).

The ordinance was accepted as provided by Section 13 thereof by ten corporations including, among others, Yellow Cab Company, Checker Taxi Company, Capitol Taxicab Company, Commercial Cab Company, Inc., Public Taxi Service, Inc., and 171 individuals owning licensed taxicabs. For any default in the observance or performance of "*any one or more of the agreements, conditions or obligations imposed upon such licensee*" the permission and authority granted to those who accepted the ordinance could be terminated by the City Council and, when terminated, the Mayor would be required to revoke all taxicab licenses held by such licensee (Section 10).

Because of the world wide economic depression, operations under the ordinance of May 18, 1934 did not prove as successful as was hoped. On November 20, 1935 the Public Vehicle License Commissioner addressed a communication to the City Council calling attention to the fact that the safety of passengers and pedestrians was affected by unprofitable operation of taxicabs, that operators were not able to make reasonable returns on their investment, that drivers were not earning a living wage, and if such conditions were suffered to continue it would result in injury to the public. He recommended that the City Council
2586 determine whether or not there should be a reduction in the number of cabs to be operated in Chicago as a measure of relief from existing conditions. The communication was referred to the Committee on Local Transportation for consideration on November 26, 1935 (Coun. J. 868). The committee took no action upon this recommendation until conditions became critical through strikes of taxicab drivers resulting in violence upon the streets of Chicago. Federal conciliators from Washington came to Chicago and recommended a substantial increase in taxicab rates to enable the taxicab chauffeurs to obtain a satisfactory wage but a compromise was effected upon recommendation of the Committee on Local Transportation

to grant a small increase in the rates of fare and to extend the term of the contract ordinance of May 18, 1934 to December 31, 1945, upon condition that a sufficient number of taxicab licenses be surrendered by licensees to reduce the number of taxicabs within the City of Chicago from the authorized number of 4,108 to 3,000.

Two of the operators, Yellow Cab Company and Checker Taxi Company, voluntarily offered to surrender sufficient licenses to reduce the number of taxicabs to 3,000 upon condition that if public convenience and necessity required additional taxicabs in the future those licensees who would voluntarily surrender some of their licenses should have a prior right to the number of taxicab licenses surrendered. Accordingly the City Council on December 22, 1937, passed two ordinances to effectuate that compromise: the first increasing the rates of fare for taxicabs for the first third of a mile from fifteen cents to twenty cents, and the second to decrease the number of taxicabs to 3,000 (Coun. J. 5026-7). Section 4 of the second ordinance extended the permission and authority granted by the ordinance of May 18, 1934 to December 31, 1945 and it was expressly made

"Subject to the conditions and limitations of this
2587 ordinance and an ordinance granting permission and authority for the operation of taxicabs within the city and for the appointment of a public vehicle license commissioner, passed May 18, 1934."

In effect the ordinance of December 22, 1937 was an amendment to the ordinance of May 18, 1934 and as such became binding, only upon its formal written acceptance and the immediate surrender of at least 616 taxicab licenses (Section 6). That ordinance was accepted by Yellow Cab Company and Checker Taxi Company and others. The necessary number of licenses were surrendered by Yellow Cab Company and Checker Taxi Company. These companies thereby executed their obligations under a contract ordinance and the City became obligated thereby to perform its promises to restore these companies to their *status quo* as of the date of the passage of the ordinance before issuing licenses to others for taxicab operations in the city of Chicago.

The relations between the City of Chicago and taxicab licensees had not materially changed since the ordinance of December 22, 1937, but due to wartime restrictions against manufacture of motor vehicles and parts most of the equipment of the taxicab licensees became so outworn

that the public service suffered and the safety of passengers and others became endangered. The Local Transportation Committee of the City Council deemed the situation so critical that it invited the taxicab licensees to a meeting to discuss ways and means of securing new equipment by permission of the Office of Defense Transportation. It was immediately pointed out by the principal taxicab operators that such program was desirable and necessary and they were anxious to replace their entire fleets of taxicabs but this would involve an investment of several million dollars which would not be justified without an extension of
2588 the term of the taxicab ordinance to permit sufficient time to amortize that investment. So on June 26, 1945 the City Council passed a simple ordinance continuing the existing arrangement between the City and taxicab operators by substituting the year "1950" as the termination date instead of the year "1945" as provided in Section 4 of the ordinance of December 22, 1937. The amendatory ordinance of June 26, 1945 provides:

> "Section 2. This ordinance shall be in full force and effect from and after its passage provided one or more licensees under the ordinance passed May 18, 1934, and appearing in the Journal of Proceedings of the City Council of that date on pages 2271 to 2273, inclusive, granting permission and authority for the operation of taxicabs within the city and for the appointment of a public vehicle commissioner, as amended, shall within thirty (30) days after the passage of this ordinance file with the City Clerk formal written acceptance of this ordinance."

The ordinance of June 26, 1945, together with the ordinance of December 22, 1937, amends the contract ordinance of May 18, 1934. Each of the ordinances in turn was accepted as required by the provisions thereof. Yellow Cab Company and Checker Taxi Company filed their formal written acceptances of the last ordinance on July 17, 1945.

Each of the ordinances, when accepted, was found upon valid considerations; the ordinance of May 18, 1934 upon the mutual promises of the contracting parties, the ordinance of December 22, 1937 upon surrender of a number of taxicab licenses and the continuance of the mutual promises under the ordinance of May 18, 1934; and the ordinance of June 26, 1945 upon continuation of the status created by the ordinance of December 22, 1937.

2589 The nature and effect of such a grant and the acceptance thereof is clearly stated in the following cases:

In *The People* v. *Chicago Tel. Co.*, (1910) 245 Ill. 121, the court said, page 134:

"* * * In granting to the Chicago Telephone Company a license to construct its poles, wires and other fixtures in the streets and alleys of the town, the board of trustees of the town of Cicero was exercising the power to regulate and control the use of the streets and alleys within the limits of the town which had been delegated to it by the General Assembly. *It was exercising a legislative function as a governmental agency of the State, and the grant was made by the town in its governmental and not in its proprietary capacity.* * * *

The grant thus made was a license which, when accepted by the telephone company, became a contract between the town, as a governmental agency of the State, and the telephone company.

Neither the town of Cicero nor any other municipality succeeding to its governmental powers over the streets and alleys of the territory then included within the towns of Cicero, or any part thereof, had or could have any right to repudiate the contract or take back the grant without the consent of the telephone company; * * * and likewise the telephone company would have no right to repudiate the contract or avoid the obligations imposed upon it by the ordinance without the consent of the governmental agency in control of the streets and alleys in which it desired to continue to maintain and construct its poles, wires and other fixtures."

In *Springfield* v. *Inter-State Tel. Co.*, (1917) 279 Ill. 324, the court said, page 327:

"* * * When the privilege of the use of a street is granted by an ordinance which is accepted and acted
2590 upon by the grantee, it becomes a contract binding upon the city, from which it cannot recede. (*Chicago Municipal Gas Light Co.* v. *Town of Lake*, 130 Ill. 42; *City of Belleville* v. *Citizens' Horse Railway Co.*, 152 id. 171; *Village of Madison* v. *Alton, Granite and St. Louis Traction Co.*, 235 id. 346.)"

There is no doubt in our opinion that under the established law the City Council has not the power to repeal the

ordinance passed June 26, 1945 and accepted by two of the principal operators of taxicabs in the City of Chicago on July 17, 1945.

Respectfully submitted,

J. F. GROSSMAN (Signed)
First Assistant Corporation Counsel

Approved:
BARNET HODES (Signed)
Corporation Counsel

2591 *Defendant's Exhibit D-19*

May 12, 1948

UNITED STATES v. YELLOW CAB COMPANY

Provisions of Chicago Codes Requiring Taxicabs to Have Name of Owner on Vehicle

Chicago Code of 1911, Chap. LXIX, Art. II, "Public Automobiles for Passengers," §2594:

"Every automobile, auto car or other similar vehicle, licensed under the provisions of this article, shall have the name of the owner thereof and the number of its license plainly painted in letters at least one and one-half inches in length, in a conspicuous place on the outside of each side of such vehicle, and such name and number shall be kept so painted, plainly and distinctly at all times while such vehicle is in use during the continuance of such license. Upon the expiration of such license (unless same is forthwith renewed) such name and number shall be at once erased from such vehicle, and such vehicle shall not thereafter be used with such name or number thereon."

A similar provision is found under Art. 1, relating to cabs, carriages, hacks, and omnibuses (horse drawn vehicles) in §2564.

Chicago Municipal Code, of 1922, Chap. LXXXV, §3917:

"Every automobile, auto car or other similar vehicle licensed under the provisions of this article, and soliciting patronage on the public streets, shall have the name of the owner thereof plainly painted in letters at least two inches in length in the center of the main panel of the rear door of said vehicle."

Revised Chicago Code of 1931, Chap. 41, §2077:

(The provision in §2077 is identical with the provision in §3917 found in the Chicago Municipal Code of 1922, above quoted.)

Municipal Code of Chicago, Chap. 28, §28-19:

"Every taxicab licensed under the provisions of this chapter shall have the name of the owner and the public passenger vehicle license number plainly painted in letters at least two inches in height in the center of the main panel of the rear door of said vehicle."

The foregoing ordinance is the one presently in effect.

2592 *Defendant's Exhibit D-20*

JOURNAL—CITY COUNCIL—CHICAGO

PUBLIC VEHICLE LICENSE COMMISSIONER

Recommendation for Consideration of the Matter of a Reduction in the Number of Taxicabs Permitted to Be Operated in Chicago

The City Clerk presented a communication, submitted by the Public Vehicle License Commissioner, recommending consideration of the matter of a reduction in the number of taxicabs permitted to be operated in Chicago, which was

Referred to the Committee on Local Transportation.

2593 *Defendant's Exhibit D-21*

City of Chicago,
Public Vehicle License Commission,
Chicago, April 25, 1934.

To the Honorable, the City Council of the City of Chicago:

GENTLEMEN—On June 28, 1933 an ordinance was passed by the city council fixing maximum rates of fare for taxicab service in Chicago at twenty cents for the first one-half mile and ten cents for each one-half mile thereafter and ten cents for each three minutes of waiting (C. J. 641). At the same time the city council passed an ordinance establishing a new public vehicle license commission composed of the commissioner of police, the city comptroller and the corporation counsel and also passed resolutions directing the new commission to investigate the question of just and proper rates of fare and number of taxicabs that should be licensed in the city of Chicago, with directions that the commission report its findings and recommendations to the city council (C. J. 642).

Before the ordinance fixing maximum rates of fare above referred to became operative suit was instituted in the federal court by Yellow Cab Company to restrain the enforce-

ment of the rates. Upon failure of that company to secure a temporary restraining order it immediately put into effect a competitive rate of ten cents for each two-thirds of a mile. This was followed by the establishment of rates of five cents for each one-third of a mile by practically all other taxicab operators in the city of Chicago.

The rate of fifteen cents a mile seemed to be the minimum beyond which no operator was willing to experiment in the keen competition for passengers during the world's fair exposition in the city of Chicago known as A Century of Progress. With the close of the fair in November, 1933, the taxicab business dropped so materially that all concerned companies and drivers, became convinced that they cannot survive at the established rates and that competition will not permit any of them to venture an increase of rates within the maximum allowed by ordinance. Therefore nearly all of the companies and the drivers of taxicabs in Chicago have agreed first that the rates of fare must be increased, and second that whatever rates of fare are established as just and reasonable under all the circumstances must be uniformly adhered to by all operators. Accordingly petitions were presented to the mayor and to the public vehicle license commission for the establishment of uniform rates of fare for the transportation of passengers by taxicabs in Chicago. These petitions appear to be signed by many hundreds of taxicab drivers employed by the Yellow Cab Company, Checker Taxi Company and by independent operators.

The public vehicle license commission has given the subject much consideration and is convinced that the maintenance of maximum rates of fare by ordinance to stimulate competition among operators and drivers of taxicabs is injurious to the public service, tends to reduce the compensation of taxicab drivers below the minimum wage required for decent living and is a menace to the safety of passengers and pedestrian and vehicular travel upon the streets. We therefore recommend the immediate establishment of reasonable uniform rates of fare for taxicab transportation to eliminate unfair competition with its attendant evils.

During the summer of 1933 this commission had many hearings at which all the taxicab operators in Chicago and the public were invited to present their views and to offer evidence of the cost of operation of taxicabs under all conditions for the purpose of enlightening us upon the question of what is a just and reasonable rate of fare for such transportation in Chicago. We employed engineers and

auditors to examine the books and records of all operators who had available data relative to the problem. Reliable data as to cost of operations under normal conditions were available only from the books and records of Yellow Cab Company. These data were in respect of the rates of fare which were effective prior to the adoption of the ordinance of June 28, 1933. Since April 9, 1928 the rates were twenty-five cents for the first quarter of a mile, ten cents for each half mile thereafter and ten cents for each three minutes of waiting. On June 3, 1933 the rates of the Yellow Cab Company were voluntarily reduced to twenty cents for the first quarter of a mile, ten cents for each additional half mile and ten cents for each three minutes of waiting time. These rates were effective only for a short period of time because on July 18, 1933 the rates of that company were reduced to those now in effect which are ten cents for the first two-thirds of a mile, ten cents for each additional two-thirds of a mile and ten cents for each three minutes of waiting time.

The maximum rates established by the ordinance of June 28, 1933 were never tried out by any of the companies operating in Chicago.

During the period of the world's fair exposition in the city taxicab operation in Chicago at the so-called fifteen cents a mile rate now current was fairly profitable indicating that taxicabs may be operated with profit at approximately fifteen cents a mile provided sufficient business is available to keep them employed the maximum time on a revenue basis. It appears that under normal conditions the ratio of non-revenue miles to the total number of miles operated by Yellow Cab Company was from 43.62 per cent to 55.16 per cent. In 1932 the percentage of non-revenue or dead miles was 54.04 per cent. It is obvious that the ratio of dead mileage to revenue mileage in the operation of taxicabs is the most vital circumstance determining profitable or unprofitable taxicab operation. There are two factors which affect the ratio of dead mileage to revenue mileage; (1) the number of taxicabs available for the transportation of passengers; (2) the rate of fare which either promotes or discourages the use of these transportation facilities.

During the world's fair season of 1933 there were approximately 4100 taxicabs in operation in the city. The ratio of dead mileage to revenue mileage was so reduced during that time as to afford a satisfactory profit to Yellow Cab Company. Since November 1, 1933 and until January

31, 1934 that company claims to have suffered an average monthly loss of approximately $26,000 and on the basis of trips the average loss during those months was $.0234 per trip.

2594 The experience of that company under such widely variant rates as were effective during the year 1933 indicates that it is impossible by any method of computation to determine in advance the rates of fare which are just and reasonable to the riding public and sufficiently remunerative to the operator and the taxicab driver because of the effect of rates upon the volume of business. In our opinion a history of experience alone can determine whether any given rate or schedule of rates is adequate for all purposes. The interests of the operators of taxicabs and the drivers should dictate caution in advancing rates at the expense of increasing the ratio of dead mileage to revenue mileage in operation.

It is obvious that aside from the unusual business developed during the period of the fair the revenue per trip at the current rates of fair is inadequate both to the operator and the driver. The average length of a passenger trip according to the experience of the only company which maintains adequate records upon the subject is 2.1 miles. The tariff from cab operations on a per trip basis during the months of November and December, 1933 and January, 1934, according to the books of that company, averaged $.389. These rates during the months referred to produced an average loss of $.0234 per trip. If the revenue per trip were increased approximately five cents it would probably not only absorb the loss but afford the operators some profit on the basis of operations during the months of November and December, 1933 and January, 1934 with approximately the same number of cabs operating in the city of Chicago.

We have therefore concluded:

(1) That no more licenses shall be issued than the number outstanding on December 31, 1933. On that date there were outstanding 4108 public vehicle licenses while 4008 taxicabs were operated upon the streets of Chicago pursuant to license and special permission of the city authorities. We have accordingly authorized the issuance of 4108 taxicab licenses for the year 1934;

(2) That a uniform schedule of meter rates should be established for all taxicabs operated in the city as follows:

For the first one-third of a mile or fraction thereof for one person..... fifteen cents
For each one-third mile or fraction thereof thereafter for one person..... five cents
For each two minutes of waiting or fraction thereof ..... five cents
For all extra passengers, whether one or more, five cents for the whole trip; and

(3 That hour rates should be abolished.

The foregoing rates should be established as experimental until such time as a sufficient history of operations can be developed to determine whether they are adequate to afford the operators a fair return after payment of all necessary and reasonable expenses of operation, including adequate wages for drivers, necessary reserves for depreciation and for the payment of claims for personal injuries, death and property damage.

We recommend also that provision be made by ordinance for the appointment by the mayor with the approval of the city council of a commission independent of any other department of city government with all necessary specific powers to regulate and control the taxicab business in Chicago.

Respectfully submitted,

(Signed) JAMES P. ALLMAN
Chairman

(Signed) R. B. UPHAM
(Signed) WM. H. SEXTON
Public Vehicle License Commission

2593 In the Supreme Court of the United States

THE UNITED STATES OF AMERICA, APPELLANT
v.
YELLOW CAB COMPANY, *et al.*

Statement of Points to be Relied Upon and Designation of Parts of the Record Necessary for Consideration Thereof—Filed Feb. 16, 1949

1. Now comes the Appellant in the above cause and for its statement of points upon which it intends to rely in its appeal in this Court adopts the points contained in its Assignment of Errors heretofore filed herein.

2. Those parts of the record in this cause which were filed in this Court pursuant to the appellant's praecipe to the

Clerk of the United States District Court for the Northern District of Illinois Eastern Division are necessary for the consideration of the foregoing points and appellant designates those parts of said record designated in said praecipe and filed in this Court pursuant to said praecipe for printing by the Clerk of this Court.

PHILIP B. PERLMAN
Solicitor General

Date: February 16, 1949.

2596 *Certificate*

I hereby certify that a true copy of the attached Statement of Points to be Relied upon and Designation of Parts of the Record Necessary for Consideration Thereof was duly served on all appellees on this 16th day of February, 1949, by depositing in the United States mails copies thereof addressed to counsel for appellees.

WALKER SMITH
Special Assistant to the Attorney General

2597 In the Supreme Court of the United States

Appellees' Designation of Additional Parts of Record to be Printed—Filed Feb. 24, 1949

The Appellees, pursuant to Rule 13 (9) of the Rules of this Court, designate for inclusion and printing in the record on this appeal, in addition to the parts designated by the Appellant, those parts specified in the designation by the Appellees, filed January 18, 1949, for the transcript of the record to this Court from the United States District Court for the Northern District of Illinois, Eastern Division.

GALLOP CLIMENKO GOULD & LYNTON
By HAROLD S. LYNTON
Harold S. Lynton
A Member of the Firm

Dated: February 23, 1949

To: Clerk of the Supreme Court
of the United States
Solicitor General of the United States
of America

2598 In the Supreme Court of the United States

Stipulation as to Printing of Record—Filed May 24, 1949

It is hereby stipulated and agreed by and between the parties in this cause as follows:

1. Plaintiff may direct the Clerk of Court that in lieu of printing in full the following portions of the record as designated by numbers and words in plaintiff's praecipe for transcript of record:
   (a) 4. Interrogatories propounded by plaintiff;
   (b) 5. Proof of Service of interrogatories;
   (c) 6. Request by plaintiff for admissions under Rule 36;
   (d) 7. Stipulation that filing with court of the answers served by defendants to plaintiff's interrogatories is waived;
   (e) 8. Stipulation that filing of the defendants' answers to plaintiff's requests for admissions under Rule 36 is waived;
   (f) 10. All plaintiff's exhibits;

   there shall be printed (1) only such excerpts from such exhibits as are set forth in a certain mimeographed volume prepared by plaintiff as an aid to counsel and the Court in the trial of this cause (but not a part of the record) and entitled "DESCRIPTION OF EXHIBITS TENDERED IN EVIDENCE BY THE PLAINTIFFS, TOGETHER
2599 WITH EXCERPTS FROM SUCH EXHIBITS," a copy of which has been conformed, pursuant to the terms of this stipulation, and is attached hereto and made a part hereof; provided, however;
   (g) With each such excerpt so printed there shall be included the exhibit number and the description of such exhibit as is set forth immediately preceding the excerpt in such volume;
   (h) If no portion of the exhibit was excerpted in said volume, there shall be printed the exhibit number and summary description of such exhibit as is set forth in such volume;
   (i) Neither the index nor any of the descriptive headings originally appearing in such volume shall be printed;
   (j) The table entitled "ABBREVIATIONS" appearing in the fore part of such volume may be printed;
   (k) Government Exhibit 139, a photostat of which is interleafed in the said volume after the exhibit

number and summary description of such exhibit, may be printed;

plus (2) all additional portions of the following plaintiff's exhibits, which are to be printed in their entirety (including letters, agreements and other documents, or copies thereof, which are annexed to such exhibits):

(1) Plaintiff's Exhibits 2, 3, 4, 6, 7, 9, 19, 21, 55 and 91.

2. Plaintiff and defendants may refer in briefs and oral arguments to (and in case of such reference the record on this appeal shall be deemed supplemented by) any portions, not contained in the above described excerpts, of any of the documents mentioned in subdivisions 1 (a) through (f) above which were admitted in evidence or were otherwise a part of the record of this cause below.

2600

3. The documents specified by defendants' (appellee's) designation of additional parts of record for printing, dated February 23, 1949, shall be printed in their entirety.

PHILIP B. PERLMAN
Solicitor General

GALLOP CLIMENKO GOULD & LYNTON
Attorneys for Appellees

By HAROLD S. LYNTON
A member of the firm

May 23, 1949

2601

Supreme Court of the United States
No. 563, October Term, 1948

THE UNITED STATES OF AMERICA, APPELLANT

vs.

YELLOW CAB COMPANY, *et al.*

Order Noting Probable Jurisdiction

March 7, 1949

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

☆ U. S. GOVERNMENT PRINTING OFFICE : 835829 NO. 21 - - - - 1949

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

Civil Action No. 46 C 1339

UNITED STATES OF AMERICA, PLAINTIFF

v.

YELLOW CAB COMPANY, ET AL., DEFENDANTS

STATEMENT AS TO JURISDICTION

In compliance with Rule 12 of the Supreme Court of the United States, as amended, the United States of America submits herewith its statement particularly disclosing the basis upon which the Supreme Court has jurisdiction on appeal to review the judgment of the district court entered in this cause on November 10, 1948. A petition for appeal is presented to the district court herewith, to wit, on January 7th, 1949.

JURISDICTION

The jurisdiction of the Supreme Court to review by direct appeal the judgment entered in this cause is conferred by Section 2 of the Expediting Act of February 11, 1903, 32 Stat. 823, 15 U. S. C. 29, as amended by Section 17 of the Act of June 25, 1948, Pub. Law 773, 80th Cong.

The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case:

United States v. *National City Lines, Inc.*, 334 U. S. 573;

United States v. *Yellow Cab Co.*, 332 U. S. 218;

United States v. *Columbia Steel Co.*, 334 U. S. 495.

STATUTE INVOLVED

The pertinent provisions of Sections 1, 2, and 4 of the Act of July 2, 1890, 26 Stat. 209, as amended (15 U. S. C. 1, 2, 4) commonly known as the Sherman Act, are as follows:

> Sec. 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal: * * *. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a misdemeanor, * * *.
>
> Sec. 2. Every person who shall monoplize, or attempt to monopolize, or combine, or conspire with any other person or persons, to monoplize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, * * *.
>
> * * * * * * *
>
> Sec. 4. The several district courts of the United States are hereby invested with juris-

diction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. * * *

THE ISSUES AND THE RULING BELOW

United States v. *Yellow Cab Co.*, 332 U. S. 218, held that those allegations of the complaint filed in this case which charged the defendants with conspiring to restrain and monopolize interstate commerce (1) in the sale of cabs to the principal companies operating cabs in Chicago, New York City, Pittsburgh, and Minneapolis and (2) in the transportation of interstate railroad passengers between railroad stations in Chicago pursuant to contractual arrangements with railroads and railroad associations, set forth a valid cause of action under Sections 1 and 2 of the Sherman Act. The *Yellow Cab* case further held (pp. 230-233) that the allegations charging the defendants with conspiring to restrain and monopolize the business of operating taxicabs in the City of Chicago failed to state a cause of action under the Sherman Act.[1]

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[1] While the Court recognized that these allegations comprehended restraint and monopolization of the transportation of interstate railroad passengers from and to Chicago railroad stations and homes, offices and hotels in that City, the Court was of the opinion that such transportation, which was intermingled with the purely local operations of Chicago taxicabs and which the railroad passenger contracted for independently and used concomitantly with other means of conveyance to and from railroad stations, was not sufficiently related to interstate commerce to constitute a part of it within the meaning of the Sherman Act.

Following the foregoing decision and remand of the cause to the district court, the Government filed an amended complaint eliminating the allegations which had been held defective. The case came to trial on the amended complaint in May and June 1948, and on November 1, 1948, the district court filed an opinion holding that the evidence failed to establish any violation of the Sherman Act. Judgment dismissing the action was entered on November 10, 1948. The judgment provided that the opinion filed on November 1, 1948, should constitute the court's findings of fact and conclusions of law.

The central issue at the trial was whether the defendants had combined to control purchases of cabs by the principal cab companies operating in four leading cities, to the end that they buy their cabs exclusively from defendant Checker Cab Manufacturing Corporation (referred to as CCM). The relevant subsidiary facts as to the intercorporate relationships of the defendants at different times, the circumstances under which control was acquired over various cab companies, and the means employed to maintain and to implement control over these companies and over their purchases of cabs are complex. The Government's proof consisted mainly of documentary evidence setting forth minutes of directors' meetings of defendant companies, contracts made by them or their subsidiaries, letters to or by their officers, and

similar data. The defendants' proof, aside from a few exhibits, was confined to the oral testimony of officers of defendant companies or their subsidiaries.

The opinion of the district court deals chiefly with the facts, but the court ignored, so far as its opinion discloses, substantially all of the facts which the Government deemed significant and which, in its view, require conclusions contrary to those reached by the court. The opinion therefore seems to reflect uncritical acceptance of defendants' evidence and of defendants' views as to the facts to be given consideration in passing upon the legal issues before the court. In general, the grounds of the court's decision appear to be as follows:

Most of the cab operating companies which came under the defendants' control were acquired by defendant Parmelee Transportation Company (referred to as Parmelee) at the time of its organization in April 1929 or shortly thereafter. Such acquisitions do not offend against the Sherman Act unless accompanied by an illegal intent, which in this case would be intent to compel the controlled companies to purchase their cabs from CCM. Absence of any such intent is conclusively established by the fact that neither CCM nor Markin (CCM's president) had direct stock control of Parmelee during this period.

Although the complaint charged continuing combination among the defendants from early 1929 up

to the filing of the complaint, and although CCM admittedly acquired direct stock control of Parmelee in September or October 1930, and admittedly thereafter retained and exercised such control, the court seemed to be of the opinion that this acquisition could have no significant bearing on the charge of combination because it resulted from events which could not reasonably have been foreseen "at Parmelee's formation."

THE QUESTIONS ARE SUBSTANTIAL

In *International Salt Co.* v. *United States*, 332 U. S. 392, 396, all members of the Court joined in the holding that "it is unreasonable, *per se*, to foreclose competitors from any substantial market." In substance, the Court so ruled in *United States* v. *Yellow Cab Company*, 332 U. S. 218, with only one Justice dissenting. The appeal in this case will present the question whether this rule applies where the foreclosing of markets to competitors is achieved through a chain of stock control, the apex of which in this case was CCM, with Markin, CCM's president, coming to the apex about 1936. The question, otherwise stated, is whether the kind of vertical integration achieved in this case constitutes a defense to exclusive dealing arrangements foreclosing competitors from substantial markets.

United States v. *Columbia Steel Co.*, 334 U. S. 459, 523-526, held that the acquisition by one company of all of the assets of another company, whose business would then by conducted by a 100%

subsidiary of the purchaser, is not in unreasonable restraint of trade merely because the purchaser contemplated and intended that goods needed for carrying on the business of the acquired company would be purchased from the company which had become its parent insofar as the parent was able to supply such goods. In such case, legality or illegality under the Sherman Act depends upon the restraint or monopolization resulting from the acquisition itself. This is so because, following acquisition, the enterprise would be carried on by a parent and a 100% subsidiary and, apart from special circumstances, violation of the Sherman Act does not arise from the carrying on of a single enterprise merely because the enterprise is comprised of two or more corporate entities.

The question whether the doctrine of the *Columbia Steel* case is applicable where a company having only a minority stock interest in another company, exercises control over it by means of actual power to dominate its management, management contracts and other devices, so to bring about exclusive dealings for benefit of the controlling company, is of large public concern and clearly is substantial. To illustrate the factual basis for this issue, CCM had about 61% of Parmelee's stock and Parmelee's holdings of the stock of Yellow Cab Company never exceeded 30%, so that Yellow's purchases of CCM cabs represented exclusive dealing between

"parent" and a "subsidiary" in which the "parent" had less than a 20% stock interest.

In the event that, on appeal, the Government should fail to establish that all of the acquisitions of operating companies were motivated by the purpose to control their purchases of cabs, the appeal will present the question whether the defendants combined to prevent any loss or dispersion of control over operating companies for the purpose of assuring that they would continue to purchase cabs exclusively from CCM. The appeal will then present the question of the application, under the facts of this case, of the principle set forth in *United States* v. *Paramount Pictures, Inc.*, 334 U. S. 131, 174, that "a vertically integrated enterprise * * * violates the Sherman Act provided a power to exclude competition is coupled with a purpose or intent to do so." See also *idem.*, p. 173.

The appeal will present the question whether the district court committed the error which was one of the grounds for reversal of the district court's judgment in *United States* v. *United States Gypsum Co.*, 333 U. S. 364, 395, namely, that findings of the district court, although supported by some evidence, were "clearly erroneous" because "the reviewing court on the entire evidence was left with the definite and firm conviction that a mistake has been committed." Unless appeal is entertained to review error of this kind, final disposition of a proceeding charging substantial restraints of trade

will be governed by the factual determinations made by a single district judge and the right of appeal, authorized by statute, will be substantially nullified.

The appeal will also present the question whether the bringing under one control of Parmelee and companies which hold over 80% of all Chicago taxicab licenses constitutes a restraint on potential competition for the inter-station transfer business carried on by Parmelee, coming within the prohibitions of the Sherman Act.

We believe that the questions presented by this appeal are substantial and that they are of public importance.

Respectfully submitted.

PHILIP B. PERLMAN,
Solicitor General.

JANUARY 7TH, 1949.

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

No. 46 C 1339

UNITED STATES OF AMERICA, PLAINTIFF

v.

YELLOW CAB COMPANY; CHICAGO YELLOW CAB COMPANY, INC.; PARMELEE TRANSPORTATION COMPANY; CAB SALES AND PARTS CORPORATION; CHECKER TAXI COMPANY; CHECKER CAB MANUFACTURING CORPORATION; AND MORRIS MARKIN, DEFENDANTS

Opinion

The amended complaint in this action alleges that the defendants, commencing in early 1929, conspired in violation of Sections 1 and 2 of the Sherman Anti-Trust Act (26 Stat. 209, as amended) to restrain and monopolize interstate commerce in (1) the sale of motor vehicles for use as cabs to the principal cab operating companies in Chicago, New York City, Pittsburgh and Minneapolis, and (2) the transportation of railroad passengers and their luggage between railroad stations in Chicago pursuant to contractual arrangements with railroads and railroad associations.

The original complaint additionally alleged that such conspiracy extended to the business of fur-

nishing taxicab services for hire in Chicago. but this was deleted after decision by the Supreme Court that such taxicab services were local and not interstate commerce and that in this respect the original complaint failed as a matter of pleading to state a claim for relief. *United States* v. *Yellow Cab Co.*, 332 U. S. 218.

The defendant Checker Cab Manufacturing Corporation (CCM) manufactures taxicabs in Michigan and sells them to purchasers in various states. The defendant Yellow Cab Company (Yellow), all of whose stock is owned by the defendant Chicago Yellow Cab Company, Inc. (Chicago Yellow), operates taxicabs in Chicago. The defendant Cab Sales and Parts Corporation (Cab Sales) also operates taxicabs in Chicago under licenses leased from Checker Taxi Company (Checker). The defendant Parmelee Transportation Company (Parmelee) owns all the stock of three subsidiaries which respectively operate taxicabs in New York City, Pittsburgh and Minneapolis. Parmelee also has contractual arrangements with railroads and railroad associations under which it transports railroad passengers and their luggage between railroad stations in Chicago. The defendant Morris Markin (Markin) is the president and general Manager of CCM.

CCM was first incorporated in 1922 and has ever since manufactured a purpose-built cab. In 1923 its stock was publicly issued and in 1928 a second public issue was effected through the underwriting firm of J. A. Sisto & Co. Markin, in 1928, was the general manager and president of CCM, and CCM, in 1928, produced its Model K cab which received widespread acclaim.

In 1928 Ernest H. Miller, president of Yellow Taxi Corporation, New York, which operated "Yellow" cabs in New York City, initiated negotiations which led to Parmelee's formation. These negotiations, commencing in 1925, took place against a background of voluntary withdrawal by substantial interests of the "Yellow" organization in Chicago.

The Yellow organization in Chicago traces back to 1910. In 1925 its components included Yellow, Chicago Yellow and Yellow Cab Manufacturing Company, the last of which manufactured the "Yellow" purpose-built cab and supplied Yellow's cab requirements. In 1925, Yellow Cab Manufacturing Company was sold to General Motors Corporation, and shortly afterwards its name was changed, its plant was transferred, and it began to engage principally in the business of bus and truck manufacture.

In 1928 Miller informed Markin that persons owning substantial interests in Yellow Taxi Corporation, New York and Chicago Yellow desired to sell those interests. Miller asked Markin whether Markin could aid in arranging financing for such purpose. Markin consulted J. S. Sisto & Co., the underwriters through whom CCM earlier in 1928 had effected its public issue of stock. Negotiations ensued among Miller, Charles A. McCulloch, vice-president of Chicago Yellow and chairman of the board of The Parmelee Company, Markin, and J. S. Sisto & Co. in connection with which McCulloch also offered for sale stock of The Parmelee Company. J. A. Sisto & Co. investigated the proposed purchase, arranged for its financing and evolved the financial and operating structure of Parmelee.

Parmelee was formed April 12, 1929 ,with a capitalization of $10,600,000 consisting of $5,000,000 of debentures, $1,000,000 of preferred shares, and 250,000 common shares of the value of $4,600,000. Only the common shares possessed voting power. The $5,000,000 of debentures and the 250,000 common shares were publicly issued through J. A. Sisto & Co. and White Weld & Co. as underwriters. The $1,000,000 of preferred shares were purchased by CCM.

Shortly after its formation, Parmelee acquired 26 per cent of the stock of Chicago Yellow, 68 per cent of the stock of Yellow Taxi Corporation, New York, and 96 per cent of the stock of The Parmelee Company.

In connection with Parmelee's formation and the preceding negotiations, Markin, aside from discussions concerning CCM's purchase of Parmelee's preferred shares, acted in his personal capacity. Markin personally bought for himself and an associate 6 per cent of Parmelee's common shares. He also entered into an employment contract with Transportation Management Corporation, a newly formed and wholly owned subsidiary of Parmelee, to act as an adviser to Miller, president of Transportation Management Corporation. Markin's salary as such adviser was $25,000 per year and Miller's salary as such president was $50,000 per year. Prior to his subscription to Parmelee's common shares and to his employment contract with Transportation Management Corporation, Markin disclosed his personal negotiations to CCM, both at director and stockholder meetings, and requested a modification of his employment contract with CCM, under which he was required to devote his

whole time to CCM's business, so that he might enter into this employment contract with Transportation Management Corporation. CCM recognized that Markin was acting in his personal capacity, and modified Markin's employment contract with itself to permit Markin to enter into this employment contract with Transportation Management Corporation.

In purchasing the $1,000,000 of Parmelee preferred shares, CCM hoped to receive, in addition to a profitable investment, the continuing good will of Parmelee as a potential customer for cabs. CCM declined, however, a prior offer to purchase common voting shares of Parmelee rather than the nonvoting preferred shares because CCM desired the safer investment.

At Parmelee's formation, Markin was neither an officer nor a director of Parmelee or any of its affiliates; nor did Markin or CCM possess any control over Parmelee or its affiliates or any of their officers or directors.

During 1929 after Parmelee's formation both Yellow and Yellow Taxi Corporation, New York, purchased Model K cabs from CCM. No agreements, express or implied, were made, however, between CCM and Parmelee or any of Parmelee's affiliates for the exclusive or continuous purchase of CCM cabs; the 1929 purchases by Yellow and Yellow Taxi Corporation, New York, were limited to a specified number delivered that year.

Subsequent to Parmelee's acquisition of stock of Yellow Taxi Corporation, New York, and Chicago Yellow, Parmelee acquired the stock of two Pittsburgh taxicab operating companies, and later organized as a wholly owned subsidiary a Minneapo-

lis taxicab operating company. These Pittsburgh acquisitions occurred in 1929 and neither Markin nor CCM participated in them. The organization of the Minneapolis taxicab operating company occurred in 1931 and followed the receivership of a prior Minneapolis taxicab operating company owned by a local street railway company. Parmelee supplied $16,305 to purchase the receivership assets which subsequently were transferred to the Minneapolis corporation organized by Parmelee.

From the evidence the court finds that in 1929 neither CCM nor Markin possessed the power to compel Parmelee or any of its affiliates to purchase only CCM cabs; that in 1929 neither CCM, Markin nor any of the defendants formed an intent or plan to compel Parmelee or any of its cab operating affiliates to purchase only CCM cabs, and that in 1929 neither CCM, Markin nor any of the defendants formed an intent or plan to control commerce in the sales of cabs in any city or place.

At the time of Parmelee's formation Markin owned 12 per cent of CCM's stock and possessed no control over CCM's directorate. By mid-1930 Markin's ownership of CCM stock declined to 5 per cent, and of Parmelee's common stock to less than 1 per cent. At that time, CCM's largest stockholder was a group represented by John J. Raskob and Pierre duPont which owned more than 34 per cent of CCM's stock. This group and later duPont interests continued until mid-1933 to be CCM's largest stockholders. For several years thereafter representatives of Cord Corporation constituted the majority of CCM's directors. During none of this period was Markin in control of CCM.

In 1930 the following events occurred. J. A. Sisto & Co. was in financial difficulties as a result of the stock market crash of October 1929 and subsequent depression, and continued to hold without likelihood of public sale, $1,442,000 of the Parmelee debentures plus some Parmelee common shares and warrants. It sold these securities to CCM. Parmelee was incurring substantial losses, partly because of business conditions and partly because of a severe strike in Pittsburgh. Markin personally owned substantially all the stock of Motor Cab Transportation Corporation which he had previously formed and whose subsidiaries operated a large fleet of CCM cabs in New York City. The Raskob-duPont group requested that Markin dispose of his Motor Cab stock so that he would not be, through this corporation, in competition with other New York City customers of CCM. Parmelee suggested that its financial strain would be eased if the $1,442,000 of debentures and the $1,000,000 of preferred shares of Parmelee then owned by CCM, carrying a current burden of interest charges, sinking fund requirements and cumulative preferred dividends aggregating over $330,000 yearly, were exchanged for Parmelee common shares. As a result of ensuing negotiations Markin, on the insistence of the Raskob-duPont group, transferred his Motor Cab stock to CCM in exchange for shares of CCM, and CCM transferred this Motor Cab stock plus all CCM's holdings of Parmelee debentures and preferred stock plus some incidental securities, to Parmelee in exchange for 422,787 Parmelee common stock. In consequence of this transaction, CCM in the latter part of 1930 became the owner of a majority of Parmelee's

common stock. This transaction, however, was not related to any sales of CCM cabs to Parmelee or any of its taxicab operating affiliates and no accompanying intent or plan connected with any control over commerce in the sales of cabs existed on the part of any of the defendants.

At the present time, CCM owns 61.75 per cent of the stock of Parmelee, and Parmelee owns 29.5 per cent of the stock of Chicago Yellow and all the stock of three subsidiaries which respectively operate cabs in New York City, Pittsburgh and Minneapolis. Yellow, whose parent is Chicago Yellow, presently operates 1,595 licensed cabs out of 3,000 licensed and 950 temporarily licensed cabs in Chicago, or 1,595 out of an aggregate of 3,950. One of Parmelee's cab operating subsidiaries presently operates 1,932 licensed cabs out of 11,814 licensed cabs in New York City; another presently operates 485 licensed cabs out of 690 licensed cabs in Pittsburgh; and the third presently operates 125 licensed cabs out of 214 licensed cabs in Minneapolis.

Checker was formed in 1919 by a group of taxicab drivers who became its stockholders and operated their cabs under its common name. Checker performed services for these driver-stockholders, including telephone, cab stand, garage, repairs, insurance and the like, for which it received service payments. Orders from Checker for CCM cabs were among CCM's first orders in 1922. In 1925 a five year contract was made between CCM and Checker for the exclusive supply by CCM of Checker's requirements of cabs. Disputes occurred, however, with respect to this contract. These disputes were finally settled in 1930, after findings by a Special Master in CCM's favor, by

the substitution of a new five year exclusive contract expiring in 1935.

Cab Sales was formed in 1930 as a method of compensating Paul C. L'Amoreaux, CCM's attorney in the CCM-Checker litigation. He became Cab Sales' sole stockholder and Cab Sales became entitled to receive a commission on CCM Sales to Checker during the substituted five year contract. In 1931 Checker's president desired to withdraw from Checker and suggested the sale to Cab Sales of the majority of Checker's stock. Cab Sales thought this a good purchase and obtained for this purpose a substantial sum from Markin personally and loans from subsidiaries of Yellow. Numerous business factors unrelated to sales of cabs and turbulent cab operating conditions in Chicago motivated this investment by Markin and these loans by subsidiaries of Yellow. Between 1931 and 1935 Checker continued its previous form of individual-driver operation. During this period, however, large arrearages accumulated in the service charges owing by the drivers and the drivers also defaulted on purchase installments of their cabs with the result that cabs were abandoned or Cab Sales was required to repossess them. In 1935 Cab Sales commenced fleet operation of 500 cabs within Checker. This was a minority of the total number of cabs operated within Checker but Cab Sales operated these 500 cabs as a fleet while the individual drivers of Checker operated their cabs individually. Between 1935 and 1941 the individual drivers gradually dropped out as a result of their difficulties of operation and their inability or unwillingness to pay their service charges and purchase installments on cabs, so that by 1941 all

"Checker" cabs were operated as a fleet by Cab Sales.

L'Amoreaux died in 1933 and since 1934 Markin has been the owner of substantially all the stock of Cab Sales. Since 1942 substantially all the stock of Checker has been owned by associates of Markin.

From the evidence, the court finds that Cab Sales did not acquire Checker's stock to compel the purchase of CCM cabs by Checker drivers or to control commerce in the sales of cabs to Chicago or elsewhere; and that the transition in Checker to a fleet operation was in adaptation to the difficulties confronting its individual-driver operation, and was not part of any intent or plan of any of the defendants to compel purchases of CCM cabs or to control commerce in the sales of cabs to Chicago or elsewhere.

At the present time Cab Sales operates 1,000 licensed cabs out of the aggregate of 3,950 licensed and temporarily licensed cabs in Chicago.

During the period 1929 through 1942 the cab operating companies affiliated with Parmelee, and Cab Sales have generally purchased only CCM cabs; between 1942 and 1947 CCM was engaged in war production and reconversion from war production and sold no cabs. In 1947 all the Parmelee cab operating affiliates, except in New York City, and Cab Sales replaced their fleets with pleasure cars manufactured by General Motors Corporation, Ford or Chrysler Corporation.

During the period 1922 through 1928 CCM manufactured and sold an aggregate of 8,019 cabs or an average of 1,336 cabs per year. During the period 1929 through 1942 CCM manufactured and sold an aggregate of 29,260 cabs or an average of

2,090 cabs per year. CCM's pre-1929 customers included all present cab operating companies under consideration in this action or one or more of their predecessors, except Yellow. Of the 29,260 cabs manufactured and sold between 1929 and 1942, 16,996 were sold to cab operating companies named in this action and 12,264 were sold to others.

The annual average number of taxicabs operated in the United States since 1928 is estimated at approximately 85,000. The bulk of these are manufactured by General Motors Corporation, Ford and Chrysler Corporation. The CCM cab has always been a purpose-built cab. The vehicles used as cabs which are produced by the large automotive manufacturers have generally been pleasure cars converted or adapted to use as taxicabs. A purpose-built cab is a vehicle built for the purpose of use as a taxicab; its essential characteristics are safety, assembly of parts in such manner as to afford low maintenance cost, driver appeal, and passenger appeal. During the period 1928 through 1942 CCM was the only manufacturer continuously engaged in the production of purpose-built cabs. The business judgment of Checker, Yellow and the cab operating subsidiaries of Parmelee has been that the CCM purpose-built cab better served their large city needs than converted pleasure cars.

Municipal regulation of taxicabs prevails throughout most of the large cities of the United States. In most of these large cities cab operations are conducted through fleets rather than as individual driver operations and in most a large proportion of the cab licenses are held by one or two operating companies. These fleet operations generally utilize a uniform cab and replacements are

commonly obtained from the same manufacturer.

In Chicago taxicabs are regulated by ordinances of the City of Chicago. These ordinances control the physical requirements of the taxicabs and also establish and control the rates. Municipal regulations likewise control taxicabs and rates in the cities of New York, Pittsburgh and Minneapolis.

On May 9, 1853 Frank Parmelee formed the firm of Frank Parmelee & Company to specialize in the transfer by coaches of railroad passengers and their luggage between railroad stations in Chicago; in 1919 this firm became known as The Parmelee Company. Arrangements for such transfer service have existed continuously since 1853 between Parmelee or its predecessors and the railroads or railroad associations.

In the conduct of this inter-station transfer business Parmelee operates limousine coaches for passengers, trucks for luggage, and collects its compensation from the railroads. Passengers surrender to Parmelee coupons attached to their railroad tickets and furnished to them when they buy such railroad tickets. Their checked luggage is transported separately by Parmelee on trucks. Parmelee's routes between Chicago railroad stations are fixed. Its limousine coaches cannot be hired separately by any one person and passengers can travel only between railroad stations. Parmelee has offices at the several stations and its personnel is established and trained. Parmelee does not operate taxicabs for the general public in Chicago and is not subject to the taxicab ordinances of the City of Chicago.

Yellow, Checker and Cab Sales, however, have engaged only in the business of furnishing taxicab

services for hire to the general Chicago public and their operations are subject to the ordinances of the City of Chicago. As part of their taxicab services for the general Chicago public, Yellow and Cab Sales furnish cab services to and from Chicago railroad stations. None of them has or has ever had limousine coaches or trucks or the type of personnel used by Parmelee and has never engaged in the kind of service rendered by Parmelee under its contractual arrangement with railroads and railroad associations.

On the evidence the court finds that the differences between these cab operating companies and Parmelee in equipment, personnel and services are such that competition with Parmelee for such contractual arrangements with railroads or railroad associations would be impractical and unlikely; that neither Yellow, Checker nor Cab Sales has ever agreed, expressly or impliedly, not to compete with Parmelee or not to engage in such interstation transfer business; and that none of the defendants has ever, expressly or impliedly, forbidden Yellow, Checker or Cab Sales to compete with Parmelee or to engage in such interstation transfer business.

In respect of sales of taxicabs the theory of the Government is that the defendants deliberately and calculatedly purchase control of taxicab operating companies in four cities in order to monopolize and restrain interstate sales of cabs to those cities. In considering the complaint as a matter of pleading the Supreme Court, *United States v. Yellow Cab Co.*, 332 U. S. 218, 227, thus stated this theory:

> "The theory of the complaint, to borrow language from United States v. Reading Co.,

> 253 U. S. 26, 57, is that 'dominating power' over the cab operating companies 'was not obtained by normal expansion to meet the demands of a business growing as a result of superior and enterprising management, but by deliberate, calculated purchase for control.' If that theory is borne out in this case by the evidence, coupled with proof of an undue restraint of interstate trade, a plain violation of the Act has occurred."

Later, in *United States v. Columbia Steel Co.*, 334 U. S. 495, 522, the Supreme Court said in reference to its decision in the *Yellow Cab* case:

> "In the complaint the Government charged that the defendants had combined and conspired to effect the restraints in question with the intent and purpose of monopolizing the cab business in certain cities, and no motion to dismiss that allegation was accepted as true."

The evidence adduced at the trial consisted of voluminous documents as well as oral testimony. On consideration of the evidence as a whole it appears to the court that the Government's theory is not borne out by the proof.

From the evidence it appears to the court that the stock relationships which developed among the defendants were not part of a design to compel the purchase of CCM cabs and were not accompanied by an intent to control commerce in the sales of cabs to any of the four cities under consideration. The affiliations which occurred were occasioned by other business factors. Thus, without reviewing each in-

stance, the status of Parmelee, which is the pivot of the Government's theory, may be considered. At Parmelee's formation in April 1929, CCM not only was without any control over Parmelee but actually refused the opportunity to take common shares of Parmelee which possessed voting power, and took instead non-voting preferred shares of Parmelee. CCM's later acquisition, in the latter part of 1930, of a majority of Parmelee's common shares was the result of a series of supervening factors consequent on the stock market crash of October 1929, none of which could reasonably have been foreseen at Parmelee's formation and none of which was connected with sales of cabs by CCM to cab operating affiliates of Parmelee. During the entire depression period conditions of financial stress continuously beset cab operating companies in general and Parmelee in particular. cf. *International Shoe Co. v. Federal Trade Commission*, 280 U. S. 291, 301. Nor did Markin possess any control over Parmelee or CCM. In the latter part of 1930 Markin's ownership of Parmelee shares declined to less than 1 per cent and his ownership of CCM shares to 5 per cent, which contrasts with an ownership of CCM shares of more than 34 per cent by the Raskob-duPont group. Raskob and duPont interests in CCM continued until 1933 and commencing in 1933 and continuing for several years afterwards Cord Corporation controlled CCM's management.

Since, on the proof, the stock relationships of the defendants did not arise as a result of a "deliberate, calculated purchase for control" over commerce in the sales of cabs, the affiliation of the defendants does not constitute a violation of the Sherman Act. *United States v. Yellow Cab Co., supra*, 227; *United*

States v. Paramount Pictures, Inc.; United States v. Columbia Steel Co., supra.

Nor, on the evidence as a whole, does the proof show that the purchases of CCM's purpose-built cabs were made under compulsion or, except for the five year and substituted five year agreements between CCM and Checker expiring in 1935, under exclusive contracts. Included in the proof to the contrary are the sale to General Motors Corporation in 1925 of Yellow Cab Manufacturing Co. which manufactured the "Yellow" purpose-built cab, and the subsequent devotion of that company principally to the production of trucks and busses; the acclaim accorded in 1928 and 1929 to CCM's Model K cab; the practice even before 1929 of many of the cab operating companies under consideration or their predecessors of buying only purpose-built cabs; the status of CCM during the period since 1929 as the only manufacturer which continuously produced purpose-built cabs; and the tendency of cab operating companies usually to replace their fleets with cabs of the same manufacture. The government has suggested that pleasure cars, rather than purpose-built cabs should, perhaps, have been bought by the cab operating companies under consideration. This, however, is within the area of business judgment and, on the evidence it appears that the business judgment of these cab operating companies was that the CCM purpose-built cabs better served their large city needs than converted pleasure cars. In *Yellow Cab Co. v. City of Chicago*, 396 Ill. 388, the Illinois Supreme Court thus referred to some of the advantages of operation in the City of Chicago of purpose-built cabs: (page 395)

"It further appears that there are certain advantages to the operation of taxicabs of special construction since they have many specially designed features for the safety, convenience and enjoyment of the passengers, and for easier operation on the public streets. Certain of these features are extra heavy frames, specially constructed bodies, specially designed brakes and steering mechanism, finger guards on door hinges, specially padded partitions, specially designed wheels, tires, ventilators and other features. Their weight is approximately 1000 pounds more than the average passenger car."

The evidence in the present case amply sustains the right of the cab operating companies under consideration to determine, as a matter of business judgment, that the CCM purpose-built cab best suits their large city needs. This business judgment should not, on the evidence, be disturbed by the court. Under these business circumstances, it appears both reasonable and natural for these cab operating companies to buy the purpose-built cab produced by its affiliate.

In *United States v. Columbia Steel Co.*, supra, 523, the Supreme Court said:

"Nothing in the Yellow Cab case supports the theory that all exclusive dealing arrangements are illegal per se.

"A subsidiary will in all probability deal only with its parent for goods the parent can furnish. That fact, however, does not make the acquisition invalid."

The evidence does not disclose any unreasonable restraint. An additional factor affecting any question of unreasonable restraint is the control by the four cities concerned through existing municipal regulations over the issuance of taxicab licenses, the physical specifications of taxicabs, and the rates of fare.

In respect of Parmelee's contractual arrangements with the railroads and railroad associations for inter-station transfer of railroad passengers and their luggage, the Government alleges that the defendants agreed that Yellow, Checker and Cab Sales would not compete with Parmelee for such contracts. No adequate proof supports this charge nor is it shown that the defendants ever forbade Yellow, Checker or Cab Sales, expressly or impliedly, from competing with Parmelee. Nor, in view of the evidence to the contrary, does any inference of an agreement of non-competition arise from Parmelee's continued contractual arrangements with the railroads and railroad associations after 1929. The historical relationship and the contractual arrangements of Parmelee and its predecessors with the railroads and railroad associations have been continuous for nearly a century. Exclusive contract arrangements have been sustained as valid. *Donovan v. Pennsylvania Company*, 199 U. S. 279; *United States v. Yellow Cab Company*, supra, 229. For years prior to 1929 the year of the commencement of the alleged conspiracy, Yellow and Checker operated taxicabs in Chicago without attempting to compete for such contracts with the railroads or railroad associations. Yellow and Cab Sales furnish taxicab services for hire to the gen-

eral Chicago public. Their equipment, personnel and services adapted to this business differ from Parmelee's to such an extent that it would be "impractical and unlikely" for them to compete with Parmelee for its inter-station transfer business. *United States v. Yellow Cab Co.*, supra, 229.

In arriving at the findings of fact made above this court has considered the various matters of proof presented; those not specifically mentioned in the findings have been deemed intermediate in the process of ascertaining the ultimate facts. Included in this category, for example is the 1937 ordinance of the City of Chicago, under which the number of outstanding taxicab licenses in Chicago was reduced to 3,000. This ordinance, as its preamble recites, was plainly the result of a determination of public convenience and necessity and the surrenders of licenses by Yellow and Checker in pursuance of this ordinance have, under the proof, no relation to any problems of sales of CCM cabs or inter-station transfer by Parmelee.

The court finds that the defendants have not combined or conspired to restrain or monopolize, and no unreasonable restraint or any monopolization was effected by any of them, and that they have not restrained or monopolized interstate commerce either in the sale of motor vehicles for use as cabs to the principal cab operating companies in Chicago, New York City, Pittsburgh or Minneapolis or in the transportation of railroad passengers and their luggage between railroad stations in Chicago pursuant to contractual arrangements with railroads or railroad association.

Counsel will submit an order in accordance herewith.

WALTER J. LA BUY,
Judge,
United States District Court.

NOVEMBER 1, 1948.

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Brief for the U.S.

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In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 22

THE UNITED STATES OF AMERICA, APPELLANT

v.

YELLOW CAB COMPANY, ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the District Court for the Northern District of Illinois (R. 89) is reported in 80 F. Supp. 936. An earlier opinion of the district court dismissing the complaint for failure to state a cause of action is reported in 69 F. Supp. 170, and the opinion of this Court on the appeal taken from the judgment of dismissal is reported in 332 U. S. 218.

JURISDICTION

The judgment of the district court was entered on November 10, 1948 (R. 104). The petition for appeal was filed and allowed on January 7, 1948. (R. 104, 108). The jurisdiction of this Court is conferred by Section 2 of the Expediting Act of February 11, 1903, 32 Stat. 823, 15 U. S. C. 29, as amended by Section 17 of the Act of June 25, 1948, 62 Stat. 869. Probable jurisdiction was noted on March 7, 1949 (R. 1674).

QUESTIONS PRESENTED

1. Whether the evidence sustains the findings of the district court that the appellees have not conspired and combined to restrain and monopolize the interstate sale and purchase of taxicabs, with the purpose and effect of requiring principal taxicab companies in four major cities to buy their requirements from a particular manufacture[redacted]

2. Whether *United States* v. *Columbia Steel Co.*, 334 U. S. 495, modified or overruled the prior decision of this Court in the instant litigation.

3. Whether in the circumstances of this case dissipation of the effects of the unlawful combination requires severance of all stock interests and other relationships between the cab manufacturing company and the cab operating companies.

STATUTE INVOLVED

The act of July 2, 1890, 26 Stat. 209, known as the Sherman Act, provides in part as follows:

SECTION 1 [as amended by the Act of August 17, 1937, 50 Stat. 693]. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. * * *. [15 U. S. C. 1.]

SEC. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, * * *. [15 U. S. C. 2.]

* * * * *

SEC. 4 [as amended by the Act of March 3, 1911, Sec. 291, 36 Stat. 1167]. The several district courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney-General, to institute proceedings in equity to prevent and restrain such violations. * * *. [15 U. S. C. 4.]

STATEMENT

This case is before the Court for the second time. The district court dismissed the original complaint (R. 1) as failing to state a cause of action (R. 23, 30). This Court, in reversing the judgment of dismissal, held that the conspiracy among the defend-

ants to restrain and monopolize sale of taxicabs to and purchase of taxicabs by the principal companies operating cabs in Chicago, New York City, Pittsburgh and Minneapolis, as charged in the complaint, violated both Sections 1 and 2 of the Sherman Act. *United States* v. *Yellow Cab Co.*, 332 U. S. 218, 225-228.

The former appeal determined the major legal issues of the case. This Court held that the commerce restrained and monopolized—interstate sales and purchases of replacements for some 5000 cabs in four cities—constituted an "appreciable segment" of interstate commerce to which the prohibitions of Sections 1 and 2 of the Act apply. *Id.*, pp. 225-226. It held that the restraints and monopolization of commerce effected by the conspiracy were of a type and character condemned by the Act. The Court so held not only with respect to defendants' action in excluding all manufacturers other than defendant Checker Cab Manufacturing Corporation from that part of the interstate cab market represented by sales to the controlled operating companies, but also with respect to their action in preventing the controlled operating companies from buying their needed cabs in a free, competitive market. *Id.*, pp. 226-227. It also held that any affiliation or integration of the operating cab companies with Checker Cab Manufacturing Corporation did not insulate the conspiracy from the sanctions which Congress had imposed. The

Court declared that common ownership and control "are impotent to liberate" a combination "from the impact of the Act" when, as was here alleged, the restraints incident to common control over previously independent concerns were not only effected by the combination of the defendants but were "the primary object of the combination." *Id.*, p. 227.[1]

After trial of the case following remand, the district court filed an opinion holding that, on the findings of fact set forth in its opinion, no violation of the Sherman Act was shown (R. 89-102). Judgment dismissing the action on the merits was accordingly entered (R. 104). The judgment provides that the court's opinion shall constitute its findings of fact and conclusions of law (*ibid.*).

The basic charge in issue on this appeal is that defendants combined and conspired to bring under their control, and to maintain control over, companies operating taxicabs in certain leading cities,

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[1] Two other charges on which this Court ruled on the prior appeal are not now in issue. The charge of conspiracy to eliminate competition for the business of transporting passengers between Chicago railroad stations was held to be within the statutory prohibitions; the charge of conspiracy to restrain and monopolize transportation by taxicab of interstate travellers between Chicago railroad stations and their homes, offices and hotels was held not within these prohibitions (332 U.S., at pp. 228-233). On remand to the district court, the complaint was amended to delete the latter charge (R. 30-33). The charge respecting elimination of competition for the business of transporting passengers between Chicago railroad stations was tried, but the Government is not now urging error in the ruling by the district court (R. 100-102) that the evidence failed to establish this charge.

with the purpose of procuring for defendant Checker Cab Manufacturing Corporation a monopoly of the business of supplying the cabs needed by these companies in their business operations. The district court, in holding that the proof did not bear out this charge, declared that "the stock relationships which developed among the defendants were not part of a design to compel the purchase of CCM cabs and were not accompanied by an intent to control commerce in the sales of cabs to any of the four cities under consideration" (R. 98). It held that "the affiliation of the defendants does not constitute a violation of the Sherman Act," and that the proof did not show that the operating companies' purchases of CCM cabs were made "under compulsion" (R. 99).

The Government proposes to show that these findings and conclusions are erroneous, that on the entire evidence this Court will be "left with the definite and firm conviction that a mistake has been committed." See *United States* v. *United States Gypsum Co.*, 333 U. S. 364, 395.

The Defendants

The detailed history of the conspiracy can be better understood if the defendants are first briefly identified and the salient aspects of their interrelationships outlined. The defendants are:

Defendants	*Designation herein*
Checker Cab Manufacturing Corporation	CCM

Morris Markin	Markin
Parmelee Transportation Company	Parmelee
Chicago Yellow Cab Company, Inc.	Chicago Yellow
Yellow Cab Company	Yellow
Cab Sales and Parts Corporation	Cab Sales
Checker Taxi Company	Checker

CCM manufactures taxicabs in Kalamazoo, Michigan, and sells them to purchasers in various states (R. 90, 94). *Markin* has been president, general manager, and a director of CCM from the time of its incorporation in 1922 except for a 12-day period in 1933 (R. 610-11; Gov. Ex. 223 (not printed [2]), R. 1290). He is also a large stockholder in CCM (Def. Ex. 7, R. 1611).

CCM owns 62% of the stock of *Parmelee*, which in turn owns all of the stock of companies engaged in major cab operations in New York City, Pittsburgh and Minneapolis (R. 90, 94). Parmelee also operates a passenger and baggage transfer business between the various railroad stations in Chicago (R. 90).

Yellow has long been the largest operator of taxicabs in Chicago (Gov. Ex. 400, R. 1425). Yellow is wholly owned by *Chicago Yellow* (R. 90), and

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[2] By stipulation, various exhibits which are part of the record in this Court have not been printed (apart from a "summary description" of the exhibit) or have been printed only in part, but any party may refer in brief or oral argument to any such exhibit or portion thereof (R. 1673-4). When referring to such an exhibit, we shall use the words "not printed" and give the record citation for the summary description.

Parmelee, through its ownership of Chicago Yellow stock and by other means, has effectively controlled Yellow (*infra*, pp. 29-34).

Checker formerly performed various services for its Chicago cabdriver stockholders (R. 94). *Cab Sales*, all of whose stock is owned by Markin, acquired control of Checker, took over operation of Checker cabs, and now leases Checker's Chicago city cab licenses (R. 59-60, 94-95). The second largest cab operations in Chicago, after Yellow's, have been those carried on first by Checker drivers and later by Cab Sales (Gov. Ex. 400, R. 1425). The cabs which they have operated, plus those of Yellow, have for a period of many years represented 2595 out of the 3,000 cab licenses in force in Chicago, or 86% of the total (*ibid.*).

The Inception of the Conspiracy

The organization of Parmelee in April 1929 was an outgrowth of a series of conferences, beginning in 1928, participated in by Markin, Ernest H. Miller, Charles A. McCulloch, and representatives of J. A. Sisto & Co. (R. 910-15). Miller was president of a company operating 1200 cabs in New York City.[3] McCulloch was chairman of the board of directors of The Parmelee Company and represented a block of between 100,000 and 115,000 shares of Chicago Yellow stock.[4] The Sisto firm

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[3] Gov. Exs. 2 (R. 969), 6 (R. 1524).

[4] R. 913; Gov. Ex. 6, R. 1527. The Parmelee Company, engaged in transferring passengers and their luggage between

was closely linked with CCM. It had underwritten an offering of CCM stock in November 1928, it held over 20% of CCM's stock, and five of CCM's nine directors were Sisto partners or associates or sponsored by it.[5]

Miller, who had originally broached the idea of forming a company to acquire stock of various taxicab companies, told Markin that the companies represented by Miller would like to buy CCM cabs but probably could not do so "because of finances" (R. 910), and Miller discussed with Markin "the possibility to buy cabs providing the present owners could be purchased," i.e., providing the deal to acquire stock of cab companies went through (R. 911).

Markin testified that the CCM directors were "all familiar" with the discussions which were being carried on to organize a company to acquire controlling interests in various taxicab companies (R. 920). As Markin put the matter, "most of the directors of Checker [i.e. CCM] were participating —knew about this entire deal, because they were mostly in Sisto's office" (*ibid.*).

Both Markin and CCM believed that the proposed combination of cab companies would ma-

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Chicago railroad stations (Gov. Ex. 6, R. 1524), was dissolved in 1934 and its business was taken over by Parmelee (Par. 22 of amended complaint, not denied, R. 43, 86).

[5] R. 809; Gov. Ex. 3, R. 974, 975. Of the nine CCM directors, one was Markin; two were Sisto partners, one (Gillespie) had his office in Sisto's office, one (Moos) was an investor whom Sisto had suggested as a director and one (Ludington) was "associated" with Sisto (*ibid.*).

terially benefit CCM by giving assurance that the companies brought under common control would purchase CCM cabs. When Markin formally presented the plan which was being worked out to a meeting of CCM's directors on January 25, 1929, he explained that the plan to amalgamate "some of the more important operating companies" provided for creating a management company to furnish "uniformity of management," and that "in this way this Company would be in a position to receive recurring orders from substantial operating companies" (Gov. Ex. 1, R. 967-8). After another director had stated that he considered the proposal "most beneficial" to CCM, the directors adopted a resolution authorizing Markin to proceed with the project (*id.*, R. 968).

As the deal was finally agreed upon and consummated in April, 1939, Parmelee acquired about 68% of the stock of Yellow Taxi Corporation of New York, about 26% of the stock of Chicago Yellow, and 96% of the stock of The Parmelee Company, and issued in exchange $5,000,000 of debentures, $1,000,000 par value of 6% convertible preferred stock, and 250,000 shares of common stock (R. 91; Gov. Ex. 2, R. 969). Sisto made a public offering of the debentures and common stock and CCM assisted in the financing of Parmelee by purchasing its entire issue of convertible preferred stock at par (R. 91).

When Markin submitted the proposed purchase

of Parmelee's preferred stock to CCM's directors for their approval at a meeting on April 5, 1929, he stated that the organization of Parmelee and its acquisition of stock in various cab companies represented a plan whereby CCM "*might obtain a sustained production by insuring recurring orders from large operating companies.*"[6] He noted that it was proposed that a subsidiary of Parmelee would agree with CCM to "endeavor to promote" sales of CCM cabs; that the plan involved an initial order for the purchase of 1000 CCM cabs at $1900 per cab payable in cash; and that "there was every prospect" that Parmelee or its sales subsidiary "would procure substantial additional orders" for CCM cabs. He also stated that a management company controlled by Parmelee would enter into a contract for management of the operating companies and that he was to be employed as an adviser to this management company at a salary of $25,000 a year. (Gov. Ex. 2, R. 969-70.)

As the minutes of the directors' meeting further record, Markin stated that he and other large stockholders of CCM considered the advantages to CCM "so substantial" that they had given Parmelee's bankers options on a "substantial block" of CCM stock at a price just above the market. The plan, he said, required ratification by CCM's stockholders, but it was "so essentially for the benefit of this Company" that there should be no difficulty in ob-

[6] Italics supplied.

taining such ratification. (Gov. Ex. 2, R. 970-1.)

The resolution approving purchase of Parmelee's preferred stock recites that in the opinion of the directors Parmelee's proposed stock acquisitions, and any future like acquisitions by Parmelee, "will be of substantial benefit to this Company" (Gov. Ex. 2, R. 971). The directors also approved a modification of Markin's employment contract with CCM, so that the requirement that he devote substantially all of his time and attention to the business of CCM should be subject to a proviso permitting Markin to become interested in Parmelee or its management subsidiary so long as he "shall continue to devote his efforts towards promoting the sales of the products" of CCM (*id.*, R. 971-2).[7]

At the 1929 annual meeting of CCM stockholders, Markin gave as the only reason for the purchase of Parmelee preferred stock that he deemed it "to be extremely advantageous in supplying a connection for marketing the products of this Corporation" (Gov. Ex. 3, R. 1480, 1487). Markin likewise brought to the stockholders' attention some of the circumstances promising effective realization of CCM's anticipated advantage.[8] By unanimous

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[7] The directors likewise approved payment to a Parmelee sales subsidiary of a 5% commission on all purchases of CCM cabs procured by Parmelee or its sales subsidiary (*id.*, R. 973).

[8] Among the circumstances referred to were his own purchase of a large block of Parmelee's stock, his option to purchase a large block of additional stock, his contract to render services to Parmelee's management subsidiary, and

vote of those present the stockholders then approved CCM's $1,000,000 contribution to the financing of Parmelee (*id.*, R. 1488).

On the very day (April 29, 1929) on which Parmelee acquired the stock of operating companies in exchange for its own securities (Gov. Ex. 5, R. 982-4), CCM received from one of these companies, Yellow, an order for the purchase of 1000 CCM cabs (Gov. Ex. 299, R. 1329). This $1,900,000 order was, indeed, swift realization of the "substantial benefit" which CCM believed would flow to it from Parmelee's acquisition of control over operating companies (*supra*, p. 11). Not only was this order concrete manifestation of the substantial benefit accruing to CCM from the combination which CCM had helped to finance and which its president had been largely instrumental in forming, but the order demonstrated the control over Yellow exercised by Parmelee from the moment of the latter's organization. The order is doubly significant in these respects in view of the fact that prior to this order Yellow had no CCM cabs—all of its cabs were Buick or Yellow Trucking Coach cabs (R. 650).

There was equally swift action respecting Parmelee's management subsidiary. It was organized even in advance of Parmelee's acquisition of the operating companies' stock and, in advance of such

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the interrelationships between CCM's directors, Parmelee's directors, and Sisto partners or associates (*ibid.*).

Markin had purchased 14,000 shares of Parmelee stock at a cost of $301,000 (R. 917) and had been given an option to purchase 25,000 additional shares (Gov. Ex. 7, R. 991-2).

acquisition, Parmelee's directors approved its contract to employ Markin as adviser at $25,000 annually, as well as management contracts between it and Yellow, The Parmelee Company, and Yellow Taxi Corporation, New York.[9]

The three latter contracts were substantially alike except as to the compensation to be paid the management company for its services.[10] The contracts vested in it almost complete managerial powers. They provided *inter alia* that it was to initiate and supervise all purchases of supplies, materials and equipment, and that no such purchase involving more than $500 should be made without consulting in advance with the management company and obtaining its approval or "instructions" from the operating company's board of directors (Gov. Ex. 7, R. 1560, 1566, 1569-70).[11]

The effect of the management contracts was to place control of cab purchases in the hands of those who had something less than an open mind in the matter. Markin, the management adviser, was a

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[9] Gov. Ex. 4, R. 975, 981-2; Gov. Ex. 7, R. 1529, 1548-9, 1559-74. A contract to employ Ernest H. Miller as general manager at $50,000 a year was also approved (Gov. Ex. 7, R. 1546-7, 1549).

[10] The Parmelee Company was to pay $25,000 per year; Yellow and Yellow Taxi Corporation, New York, each agreed to pay $50,000 a year plus a certain portion of its net earnings (Gov. Ex. 7, R. 1562-3, 1567, 1571-3).

[11] Significantly, in 1932 the contract of Yellow (the only operating company in which Parmelee was not a majority stockholder) was amended to tighten the control of the management company by requiring its approval of all purchases over $500, even where the Yellow board of directors authorized them (Gov. Ex. 21, R. 1583).

CCM officer specifically required by his employment contract to promote the sale of CCM cabs. And since CCM had agreed to pay a 5% commission on all orders procured through a sales subsidiary created by Parmelee, that company had a strong interest in compelling the operating companies controlled by it to buy CCM cabs (Gov. Ex. 298, R. 1328-9). Thus in effect Parmelee, through its subsidiaries, occupied the dual position of purchasing agent for operating companies and sales agent for CCM, and received compensation for its "services" from both seller and buyer.[12] Under such circumstances independent decision as to the merit of CCM cabs was impossible.

Further Acquisitions of Control Over Operating Companies

Pittsburgh. In August 1929 Parmelee contracted to purchase all of the stock of Pittsburgh Transportation Co., which was operating approximately 300 cabs in Pittsburgh (Gov. Ex. 32, R. 1038-43).[13] The purchase price was about $400,000 (*id.*, R. 1040). The agreement required the Pittsburgh Company to enter into a contract with Par-

[12] Compare *United States* v. *New York Great A. & P. Tea Co.*, 67 F. Supp. 626, 655 (E.D. Ill.), affirmed, 173 F. 2d 79 (C.A. 7).

[13] While Markin has testified that he did not personally participate in this purchase and that he believed that he had opposed it (R. 921-2), the agreement to purchase Pittsburgh Transportation was signed on behalf of Parmelee by Haveron, a director and officer of CCM (Gov. Ex. 32, R. 1043; Gov. Ex. 33, R. 1048).

melee's management subsidiary upon the terms of the management contracts already imposed on Yellow and other Parmelee-controlled operating companies (*id.*, R. 1042, 1045-8). Significant of the contemporaneous purpose to obtain for CCM a monopoly of sales of cabs to the acquired company is the provision in the purchase agreement that the sellers would not, prior to the closing date, make any unusual commitments for the purchase of cabs without Parmelee's consent, and that "Consent is hereby given to the purchase * * * of approximately 150" CCM cabs (*id.*, R. 1043). The purchase of CCM cabs thus made a part of the agreement of acquisition was duly carried out; among the first actions of the Pittsburgh Company after its change of owners was the purchase of 100 CCM cabs; the next year (1930) it bought 100 more (Gov. Ex. 459, R. 1462).

In the latter half of 1929 Parmelee acquired all the stock of Yellow Cab Company of Pittsburgh at a cost of over $500,000 (Gov. Ex. 39, R. 1051-2). This company also immediately purchased CCM cabs, 148 in 1929 and 133 in the next two years (Gov. Ex. 459, R. 1461).

Parmelee's two Pittsburgh subsidiaries, which were later merged (R. 901), presently operate 485 out of a total of 690 cabs licensed in Pittsburgh (R. 933).

Minneapolis. On December 31, 1930, Parmelee purchased at a receivership sale all of the assets (including 120 cabs) of a Minneapolis taxicab com-

pany (R. 896; Gov. Ex. 48, R. 1067). Markin was the moving spirit in this purchase (R. 895-8). As with the other companies which came under Parmelee's control, substantial purchases of CCM cabs immediately followed. Of the 130 to 140 cabs which the acquired company had at the time of receivership, only ten or twelve were CCM cabs (R. 898), but in its first year of operation as a Parmelee subsidiary it purchased 174 CCM cabs, none from any other manufacturer (Gov. Ex. 459, R. 1461). For many years it has operated about 58% of the cabs licensed in Minneapolis (Gov. Ex. 481, R. 1471).

DeLuxe Cab. In 1929 the DeLuxe Motor Cab Company, owned by Markin, was the third largest cab company in Chicago. It did not itself operate cabs, but it had Chicago city licenses for some 360 cabs which were operated by drivers under an arrangement "whereby the company made a substantial profit on the cost price of the cabs" (Gov. Ex. 40, R. 1053-4). In October 1929 Parmelee decided to buy all of its stock for $388,000 although the company had sustained losses for some time past. The reasons given for the purchase were that it would give Parmelee control of two of the three largest cab companies in Chicago; that DeLuxe was now in a position to buy CCM cabs; and that it was believed that "manufacturing companies and companies not now operating in Chicago" would be glad to pay more for DeLuxe than Parmelee proposed to pay (*id.* R. 1053-4, 1069).

On the same day (February 5, 1930) on which

the purchase agreement for DeLuxe stock was signed (Gov. Ex. 42, R. 1057), CCM and Checker Taxi Company, Chicago's second largest taxicab company, executed an elaborate contract in settlement of protracted litigation between the two (Gov. Ex. 88, R. 1122-34; Gov. Ex. 91, R. 1141). In this contract, which required Checker to purchase only CCM cabs for a period of five years (Gov. Ex. 91. R. 1141), CCM agreed to "cause" *DeLuxe* to contract with CCM, within 30 days thereafter, to purchase no cabs other than CCM cabs for a period of five years from February 5, 1930 (*id.*, R. 1132-3). Thus, although the district court found that "in 1929 neither CCM nor Markin possessed the power to compel Parmelee or any of its affiliates to purchase only CCM cabs" (R. 92), early in 1930 CCM in a most important matter acted on the assumption that it did have this power. DeLuxe did, in fact, enter into a contract with CCM to purchase from it all of its cab requirements (Gov. Ex. 47, R. 1065-6).

Not long after the DeLuxe acquisition, Parmelee's chairman reported to its directors that DeLuxe would not be in a position to show a profit for a considerable period of time and that combining its operations with those of certain independent cab operators in Chicago would be profitable and would "prevent some outside company from entering the taxicab operating field in Chicago" (Gov. Ex. 45, R. 1063-4). A new company, Chicago Cab

Company, was formed to take over both DeLuxe and independent driver-operators (R. 748, 769-70; Gov. Ex. 57, R. 1077). Chicago Cab likewise operated at a loss and in July 1932 arrangements were made, with CCM's consent, to transfer its operations to Checker Taxi Company (Gov. Exs. 53-54, R. 1071-3), which was then controlled by Markin (*infra*, p. 21).

Checker Taxi. Checker Taxi Company was organized in 1919 (R. 745). Its stockholders were individual Chicago cab operators for whom Checker performed various services and charged a service fee (R. 746). By 1929 Checker had 1750 Chicago cab licenses, compared with Yellow's 2350 licenses and 1189 licenses held by "independents" (Gov. Ex. 400, R. 1425).

The Checker drivers began using CCM cabs in 1922 (R. 745-6). But their use was not for long voluntary. In 1925 Checker and CCM entered into a contract, in settlement of litigation between them, which required Checker to purchase CCM cabs (Gov. Ex. 88, R. 1123-4). On suit by CCM for damages caused by breach of this contract, its validity was upheld against the charge that it had been procured by fraud, and on February 5, 1930, Checker and CCM entered into a contract settling the law suit (*ibid.*). The contract required Checker to purchase only CCM cabs for a five-year period, and to buy these cabs from Cab Sales at $2350 a cab (*id.*, R. 1126, 1134; Gov. Ex. 91, R. 1141). On

the date of this contract, CCM made an agreement making Cab Sales its exclusive agent (for sales to Checker) for a five-year period (Gov. Ex. 90, R. 1137). Cab Sales was, under the agreement, to buy cabs outright from CCM at the price of $1900 per cab (*ibid.*).[14]

L'Amoreaux was Cab Sales' sole stockholder until 1931, when Markin, Oakland and Miller purchased 777 of its 1000 shares (R. 808-10).[15] In that year Cab Sales purchased more than 50% of Checker's stock (R. 808). Money to buy the stock was borrowed from Benzoline Motor Fuel Co., a wholly owned subsidiary of Chicago Yellow,[16] and Benzoline, in turn, obtained the $500,000 by borrowing it from Yellow (Gov. Exs. 96-98, R. 1150-2). Checker stock was pledged as security stock for the loan (R. 842). In 1932, in order to finance further purchases of Checker stock by Cab Sales, Waverly Corporation, a wholly owned subsidiary of Yellow,[17] advanced to Cab Sales $200,000 and Waverly obtained $180,000 of the $200,000 from Yellow (Gov. Exs. 101, 103; R. 1158-61, 1165-9).

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[14] Cab Sales was organized as the means of compensating L'Amoreaux, CCM's counsel in the Checker litigation (R. 806-807). As he was Cab Sales' sole stockholder, L'Amoreaux would make a profit of $450 on every cab sold to Checker.

[15] Oakland was first vice-president, treasurer and a director of CCM (R. 802) and also a personal employee of Markin (R. 826). Miller was president of Parmelee, president and general manager of Parmelee's management subsidiary, and a director of both Chicago Yellow and Yellow (Gov. Exs. 7 (R. 987-8), 41 (R. 1055), 140 (R. 1211), 307 (R. 1333)).

[16] Amended complaint, par. 3(b), not denied (R. 34, 76).

[17] Gov. Exs. 206-7, R. 1287.

By stock purchases thus financed by Yellow, Cab Sales procured substantially all of Checker's stock. After Checker came under control of Cab Sales, that company gradually took over both the ownership and operation of Checker cabs as the Checker drivers defaulted on their service charges or on cab purchase payments (R. 749, 752, 778-85). By 1941 all Checker cabs were being operated by Cab Sales (R. 730).

The net result was that Yellow financed a shift in control of its principal competitor, and cemented CCM's monopoly of sales to Chicago cab companies. Control was shifted from a company (Checker) which had been in long and bitter controversy with CCM and which, although a purchaser of CCM cabs, had been so only by reason of contract obligation forced upon it by CCM through litigation. The control was shifted to a company (Cab Sales) controlled by the top executive officers of CCM and Parmelee. Furthermore, the Cab Sales stock soon passed solely into Markin's hands. In 1932 he took over Miller's stock in Cab Sales and in 1933 L'Amoreaux's stock as well (R. 809). By the end of 1934 he owned substantially all of its stock (Gov. Ex. 134, R. 1208). Markin, it will be recalled, was obligated by his contract of employment with CCM to use his best efforts to procure sales of that company's product (*supra*, p. 12).

As early as May 1931, Markin was able to report to CCM's board of directors that "interests friendly

to this corporation had acquired a controlling interest in" the stock of Checker and that in view of the change in the control of Checker, it might be advisable to arrange for satisfaction of CCM's judgment against Checker (Gov. Ex. 99, R. 1154-5).

When Samuels, who was vice president of Yellow and president of Chicago Yellow, testified as to the reasons for their loans to finance Cab Sales' purchases of Checker stock, he said that the companies felt that the effect of the transaction would be that "our competitor would feel a sort of friendly interest in us rather than an antagonistic interest" (R. 843). When asked why Yellow did not consider buying Checker outright, his answer was, "Because the cry has always been monopoly and *we were opposed to its ourselves*" (*ibid.*). The opposition, it is plain, was to exposure of monopoly, not to its actuality.[18]

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[18] If Samuels' testimony is to be believed, he was unaware at the time of the first loan that the owners of the company whose entry into the cab business was to be financed by Yellow were the persons who were also effectively controlling CCM, Parmelee, Chicago Yellow and Yellow itself (R. 855). But Yellow's management advisers were not equally in the dark. Samuels testified that the matter was discussed with Miller in his capacity as adviser to *Yellow*, and that Miller "suggested it would be a good thing for the industry and a good thing for Chicago Yellow and Yellow, which had a lot of money which was not being invested" (R. 857). Miller was Parmelee's president and one of the insiders who were about to buy Cab Sales (*supra*, p. 20).

CCM's Acquisition of Direct Stock Control of Parmelee

In October 1930 three of the appellees entered into a deal which insured CCM's power to control taxicab purchases, expanded Parmelee's operating cab company empire, and substantially increased Markin's holdings in CCM. Formally there were two transactions: (1) Markin traded all the stock of Motor Cab Transportation Co. (which controlled subsidiaries operating 2050 cabs in New York) to CCM for CCM common stock;[19] and (2) CCM traded to Parmelee all the stock of Motor Cab, all of Parmelee's $1,000,000 par value preferred stock, $1,442,000 of its debentures, and options on its common, for 422,787 shares of newly issued Parmelee common (Gov. Exs. 61-62, R. 1080-8; Gov. Ex. 64, R. 1093-6). In substance there was one transaction by which Parmelee got Motor Cab (plus its own securities and options on its common), Markin got 58,447 shares of CCM stock, and CCM got a majority interest in Parmelee.[20]

There can be no dispute that CCM acquired by

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[19] Although the agreement for this exchange was between Markin and L'Amoreaux, on the one hand, and CCM on the other (Gov. Ex. 62, R. 1085-8), all of the CCM stock issued in exchange for Motor Cab stock went to Markin (Def. Ex. 7, R. 1611).

[20] Following the new issue of Parmelee common, it had 721,905 shares outstanding (Def. Ex. 8, R. 1611). The 422,787 shares received by CCM, plus 23,000 purchased from Sisto shortly before (Gov. Ex. 64, R. 1094), gave CCM 445,787 shares, or 61.75% (Gov. Ex. 139, R. 1210). CCM has continued to own 61.75% of Parmelee's stock (R. 94; Def. Ex. 8, R. 1611).

this transaction the power to control Parmelee and Parmelee's operating subsidiaries. The crucial question is whether CCM's purchase of a controlling interest in Parmelee was, as we contend, a calculated purchase for control in order to assure maintenance of captive outlets for CCM cabs or whether the control was a mere by-product of investment by CCM in a business which CCM believed would be profitable.

The contemporaneous official documents of the parties are silent as to any investment consideration. They make pointed reference, on the other hand, to the control of Parmelee which the deal would assure. When purchase of Parmelee stock came before the CCM stockholders for approval, it was resolved that acquisition of "a controlling interest" in Parmelee be approved (Gov. Ex. 64, R. 1096). At the Parmelee directors' meeting which approved the plan, its president described the plan as the product of negotiations "looking towards a closer affiliation" of CCM and Parmelee (Gov. Ex. 61, R. 1080). Nor was CCM slow to exercise control. Within six days after its stockholders approved the acquisition on September 25, 1930 (Gov. Ex. 64, R. 1093-4), Markin and L'Amoreaux were added to the Parmelee board of directors and Markin was made chairman of the board, and on October 16th an executive committee consisting of Markin, L'Amoreaux and Miller was appointed (Gov. Exs. 65(R. 1098), 66(R. 1103)). On Novem-

ber 1st "closer affiliation" was completed when Miller was placed on the CCM board (Gov. Ex. 223 (not printed), R. 1290).

The surrounding circumstances tell the story even more clearly. We have seen that Parmelee, from its inception, had used its control over operating companies to cause them to purchase CCM cabs. We have also seen the firm foundations on which such action by Parmelee for the benefit of CCM rested—the companies' interlocking directors, Markin's position as president of one and special adviser to the management subsidiary of the other, Markin's and CCM's stock interest in Parmelee, and, above all, Sisto's major interest in both companies.

But by September 1930 Sisto had passed out of the picture and there was more than a possibility that this development would destroy the existing relationship so profitable to CCM. Sisto was in financial difficulties following the stock market crash in October 1929, and in July 1930, shortly before Sisto's liquidation, CCM bought from it for more than $1,250,000, Sisto's entire holdings of Parmelee debentures, 23,000 shares of Parmelee common, and an option on 93,445 additional shares of common (R. 810, 927; Gov. Ex. 64, R. 1093-1094; Gov. Ex. 68, R. 1107).

The measure of the importance placed by CCM upon obtaining stock control of Parmelee is what CCM was willing to pay to get control. At the time of Parmelee's organization in April 1929,

time of Parmelee's organization in April 1929, when there were many links binding it to CCM, CCM's directors had been unwilling to purchase Parmelee common and insisted upon confining the CCM investment to a senior Parmelee security—debentures or preferred stock (R. 918). This stands in contrast with their action in September 1930 when CCM surrendered its creditor and preferred stock position in Parmelee, in exchange for a common stock equity giving CCM outright stock control. At that time Parmelee "did not have any money" (R. 928), it was in need of additional working capital (Gov. Ex. 61, R. 1081), and Markin was himself unwilling to exchange his Motor Cab stock for Parmelee stock (R. 926). Plainly there was no element of prudent investment in this surrender of senior securities, plus Motor Cab stock, for a controlling stock interest in Parmelee;[21] rather, it was "deliberate, calculated purchase for control." CCM took a grave financial risk in order to assure that it could continue to monopolize the cab purchases of the Parmelee-controlled operating companies and prevent them from purchasing cabs in a free competitive market.[22]

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[21] CCM itself claimed that it sustained a loss of $1,157,266 on the transaction (Gov. Ex. 67, R. 1106).

[22] In this connection appellees have sought to prove that it was not Markin but a stockholder group represented by John J. Raskob which engineered the deal (R. 925-926, 928). It seems elementary that CCM, the corporate entity, is responsible for its acts, whoever may have procured them. In any event Markin appears to have consented to the transactions in his personal capacity as owner of Motor Cab, and, in his official capacity as president of CCM, he made the

Compulsion upon Controlled Operating Companies to Purchase CCM Cabs

The extent to which CCM's welfare depends upon control of the operating companies is strikingly shown by the statistics on its sales since January 1, 1929. Of 29,260 cabs sold, 16,996 were sold to the operating companies here involved and only 12,264 to outside companies (Def. Ex. 13, R. 1628). Since 1945 CCM has not even troubled to maintain a sales organization except in New York City and at the factory (R. 828).

The cab purchase record of the Parmelee and Markin companies is revealing. The following table shows their purchases of CCM cabs and those of other cabs from 1929-1941:[23]

	CCM	*Other*
Yellow	6301	—
Yellow Cab of Minneapolis	417	2
Pittsburgh subsidiaries	1276	5
National Transportation Inc.[24]	6998	—
Parmelee (limousines and trucks 1929-1939)	110	—
Cab Sales	2439	—

Both the importance of the operating companies

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offer to Parmelee which resulted in CCM's acquisition of Parmelee control (Gov. Ex. 61, R. 1084, 1088).

[23] R. 790; Gov. Exs. 452-460, R. 1457-63. The years 1929-1941 are selected for the purposes of the above table because between 1942 and 1947 CCM was engaged in war production and reconversion from war production and sold no cabs (R. 95).

[24] National is now Parmelee's only New York subsidiary; it operates 1932 cabs (R. 802). In computing National's pur-

in the CCM scheme and the confidence that Markin felt in his ability to control them are reflected in a syndicate agreement, executed August 10, 1933, between Markin and the Cord Corporation (Gov. Ex. 485, R. 1472). When the Raskob interests ousted Markin on August 1, 1933, he turned to Cord for financial aid in exercising an option he held on a block of 58,837 shares of CCM common stock (*ibid.*). The syndicate agreement was the result. It gave Cord a majority on the CCM Board, but this was evidently not deemed enough fully to protect Cord's stake in CCM. For the agreement also provided (*id.*, R. 1473):

> that, if Cord Corporation so requests at any time, he [Markin] will to the fullest extent of his ability cooperate in every possible way to put representatives of Cord Corporation *in control of Parmelee Transportation Company, Chicago Yellow Cab Company, Inc., Checker Taxi Company, The Waverly Corporation, Cab Sales & Parts Corporation and The Transportation Management Corporation.* [Emphasis added.]

In the case of those operating companies which were directly or indirectly owned by Markin or Parmelee there has been no problem of maintaining control for the benefit of CCM.[25] Markin's in-

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chases of CCM cabs, we have included 1823 cabs purchased from "affiliated companies" (Gov. Ex. 459, R. 1463).

[25] These include the New York companies, the Pittsburgh Company, the Minneapolis Company, Cab Sales and Checker. (After Checker ceased to function as an operating company it was sold (in 1942) to a group of Markin's associates (Gov. Ex. 132, R. 1206)).

terest in CCM welfare was always assured by his substantial stock holdings,[26] by his position as president and chief executive officer of CCM, and by his employment contract. As to Parmelee, CCM has owned a majority of its stock since October 1930.

The record reveals but one instance in which Parmelee even proposed action inimical to CCM's interests. During the 12-day period (August 2-14, 1933) in which Markin was ousted from the presidency of CCM (R. 411, 610-1), Parmelee's chairman recommended acceptance of an offer by Yellow to purchase Parmelee's entire stock interest in Chicago Yellow, Yellow's 100% parent (Gov. Ex. 167, R. 1237-8). After he had stated that Parmelee "was in great need of working capital" and that the sale "presented an advantageous solution to its difficulties," the directors approved the sale (*ibid.*). CCM's lawyers gave notice that CCM would, as majority stockholder of Parmelee, bring action to enjoin or set aside the sale if it should be made (Gov. Ex. 484, R. 1471-2), and this action effectively blocked the sale (Gov. Exs. 166 (R. 1236-7), 172 (R. 1240-1), 173 (R. 1243)).

In the case of Yellow the problem of control was somewhat more complicated because the conspirators have generally held less than a majority interest in Yellow's parent, Chicago Yellow. Never-

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[26] As of January 1, 1929 Markin owned 14.9% of the CCM stock; by March 1938 he had over 45% of CCM's stock and he appears to have owned at least this percentage of CCM's stock ever since then (Def. Ex. 7, R. 1611).

theless control has been maintained, as a practical matter, from the foundation of Parmelee. We have seen how Yellow's initial order for CCM cabs was planned by the conspirators and how the management contract was imposed on it (*supra*, pp. 11, 13-14). In 1932 when a supplier apparently questioned Yellow's credit, Oakland, as vice president and treasurer of CCM, wrote, "The Yellow Cab Company of Chicago is controlled by the Parmelee Transportation Company, which, in turn, is controlled by" CCM (Gov. Ex. 142, R. 1212). At about the same time the Parmelee directors authorized the deposit of its Chicago Yellow stock "in a voting trust, or otherwise to preserve the equity *control* of this Corporation in said Chicago Yellow" (Gov. Ex. 74, R. 1112; emphasis supplied).

Markin and other CCM officials repeatedly exercised their control over Yellow in minor as well as major matters. The record reflects an almost uniform pattern of domination (see, *e. g.* Gov. Exs. 273-297 (R. 1318-1327), 328 (R. 1346), 336-351 (R. 1351-5), 355 (R. 1358)).

The isolated instances of nascent rebellion against Parmelee control only serve to show the firmness with which that control was maintained. In 1934 Fulton, a director of Yellow and Chicago Yellow, criticized Parmelee's influence and suggested an investigation of the use of smaller cars (rather than purpose-built CCM cabs) by Yellow (Gov. Exs. 175-176, R. 1244-5). Markin promptly demanded that Fulton be replaced as a director

(Gov. Ex. 179, R. 1247-1248). Samuels, to whom the demand was addressed, was shocked. He thought that the ground upon which the proposed change in directors was nominally to be made (to give Parmelee more representation) was ridiculous. Samuels wrote (Gov. Ex. 182, R. 1251):

> Please bear in mind that these three men [Fulton and two others] were placed upon this Board by Parmelee and that I and every other member of this Board was placed here by Parmelee. It * * * seems a direct slap in the face at me * * * that Parmelee * * * decides that three members of the Board are unfit to act as directors and watch the interests of Parmelee * * *.

At the same time that the director issue was being debated, the purchase of 1000 new cabs was being discussed. On March 27, 1935, Chicago Yellow wrote Markin a letter discussing the director question, the cab purchase matter, and various other questions (Gov. Ex. 185, R. 1256). The letter was defiant in tone and could only be interpreted as a declaration of independence. There was included a flat refusal to remove Fulton unless "just cause" could be shown (*id.*, R. 1257). With respect to the proposal that Yellow buy 1000 new CCM cabs, serious objection was made to committing Yellow to such a major act without the opportunity to test the cabs out. Markin was presented with an ultimatum (*id.*, R. 1258):

> In view of the fact that [CCM] * * * has not made any cabs during the past year, we are unable to judge the merits of the product which it now proposes to furnish * * *. We are of the opinion that in spending approximately $1,350,000. of the stockholders' money, we should be furnished with six cabs of the type which you propose to sell this corporation, and be permitted to use these cabs for a sufficient length of time to enable us to find any defects which may develop. We will assure you that if, after testing the six samples submitted by you, and after the correction by Checker of any defects which may appear at no additional cost to us, the officers of Yellow Cab Company will recommend to the Board that an order be placed with you for 1000 cabs, provided that these cabs are still the most satisfactory of those submitted to the company.

Moreover the Yellow officers insisted upon a written guaranty with reference to prices of replacement parts, and stated (*ibid.*):

> This guaranty forms a part of the transaction and it will be impossible to place the order with you unless Yellow and [CCM] * * * can come to some agreement in reference to replacement parts * * *.

This was brave talk. But something must have occurred to melt such defiance. The very next day the directors of Yellow unanimously approved the purchase of 1000 cabs after a general

discussion reflecting how poor the cabs of other manufacturers were and how satisfactory had been the experience with CCM cabs (Gov. Ex. 186, R. 1259-60). There was no mention of the conditions precedent to purchase of CCM cabs insisted upon in the report of the preceding day.[27] Mr. Markin, although not a director of Yellow was present at the meeting (*id.*, R. 1259). At all other times the doubts of Yellow officers as to the merits of CCM cabs were expressed only privately (*e. g.* Gov. Ex. 177, R. 1246; Gov. Ex. 326, R. 1345). And the resignation of Fulton, the offending director,[28] from the Chicago Yellow Board was arranged (Gov. Exs. 192-193, R. 1264-6).

It would seem to serve no useful purpose, and unduly to prolong this brief, to detail the intricate intercompany financial deals and stock purchases which were used to assure that Chicago Yellow was controlled by interests friendly to CCM. They included extensive stock purchases by Yellow of its parent's stock and the placing of that stock in the Waverly Corporation with the voting stock controlled by Markin and Yellow (R. 626-7; Gov. Exs. 147, 148, R. 1217-8, Gov. Exs. 205-209, R. 1284-8). It suffices here that effective control was main-

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[27] It is difficult to reconcile these events with Samuels' testimony that he always acted independently as a director of Yellow and Chicago Yellow (R. 886-887) and that Markin "didn't have anything to do with the running of our company" (R. 869).

[28] Another offending director (Keller) accepted retirement gracefully but took occasion to state that "there has been nothing whatever said or done on my part to oppose * * * Mr. Markin's wishes * * * ." (Gov. Ex. 192, R. 1264).

tained. Yellow had no CCM cabs before the conspiracy commenced in 1929 (*supra*, p. 13). In the period 1929-1941 it bought 6301 CCM cabs, none from any other manufacturer (*supra*, p. 27). From 1941 to February 1946, all of the 176 cabs which it purchased (with possibly one exception) were used CCM cabs (R. 657, Gov. Exs. 452-453, R. 1457-8). In August 1945 it placed an order with CCM for 1595 cabs, but when that company was unable to fill the order Yellow turned to other sources, and obtained 1,137 non-CCM cabs during the period March 1946-August 1947 (R. 660, 668; Gov. Ex. 335, R. 1350; Gov. Exs. 452-453, R. 1457-8).

SPECIFICATION OF ERRORS TO BE URGED

The district court erred—

1. In entering a final decree dismissing the plaintiff's amended complaint.

2. In holding that the evidence does not establish the unlawful combination and conspiracy in restraint of interstate commerce charged in the amended complaint.

3. In finding that in 1929 none of the defendants formed an intent or plan to control commerce in the sales of cabs in any city or place.

4. In finding that in 1929 none of the defendants formed an intent or plan to compel Parmelee or any of its cab operating affiliates to purchase only CCM cabs.

5. In finding that in 1929 neither CCM nor Markin possessed the power to compel Parmelee or any of its cab operating affiliates to purchase only CCM cabs.

6. In finding that CCM recognized that Markin was acting in his personal capacity when, in connection with Parmelee's organization, he entered into an employment contract with Transportation Management Corporation, a wholly owned subsidiary of Parmelee.

7. In concluding that the stock relationships which developed among the defendants were not part of a design to compel the purchase of CCM cabs; were not accompanied by an intent to control commerce in the sale of cabs to the leading cab companies in Chicago, New York City, Pittsburgh, or Minneapolis; and were occasioned by other business factors.

8. In finding that the transactions during the latter part of 1930 whereby Markin transferred to CCM all of his stock in Motor Cab Transportation Corporation in exchange for stock of CCM, and CCM transferred to Parmelee such Motor Cab stock plus all of CCM's holdings of Parmelee debentures and preferred stock in exchange for 422,787 shares of Parmelee common stock, were not related to any sales of CCM cabs to Parmelee or to any of its cab operating affiliates, and were not accompanied by any intent or plan on the part of any defendant respecting control over commerce in the sales of cabs.

9. In finding that it was the business judgment of Checker, Yellow, and the operating subsidiaries of Parmelee during the years 1929 to 1942, inclusive, that the CCM purpose-built cab better served their needs than converted pleasure cars and in implying thereby that their purchases of CCM cabs resulted from exercise of business judgment rather than from extraneous factors.

10. In making no findings as to most of the facts, established by undisputed documentary evidence, on which the plaintiff relied.

11. In concluding that absence of direct stock control of Parmelee by CCM or Markin, or by both together, at the time of Parmelee's organization in April 1929 and shortly thereafter, established that the defendants were not then, or at any time thereafter, parties to a combination and conspiracy to acquire control over operating cab companies for the purpose and with the effect of restraining and monopolizing their interstate purchase of cabs.

SUMMARY OF ARGUMENT

I. Commencing in 1929 and continuing down to the present time, there has been a conspiracy among the appellees for the acquisition and maintenance of control of the leading taxicab companies operating in New York City, Chicago, Pittsburgh and Minneapolis. A principal purpose and effect of the conspiracy has been to cause the operating companies to obtain their taxicab requirements from appellee CCM to the exclusion of all other cab manu-

facturers. Contrary findings of the trial court are in disregard of overwhelming, undisputed documentary evidence.

II. The decision by this Court on the prior appeal in this case (*United States* v. *Yellow Cab Co.*, 332 U.S. 218) controls the legal issues. It was there held (1) that the sale of replacements for some 5000 taxicabs constitutes an appreciable segment of interstate commerce, protected by the Sherman Act against unreasonable restraint or monopolization; (2) that a combination to acquire control over the companies which operate the 5,000 cabs, with the purpose of excluding manufacturers other than CCM from the opportunity to sell cabs to them, is an unreasonable restraint of commerce condemned by the Act; and (3) that such common ownership or control of the corporate appellees as resulted from their conspiracy was impotent to liberate it from the ban of the Act.

The subsequent decision in *United States* v. *Columbia Steel Co.*, 334 U.S. 495, does not overrule or modify the law as thus declared, but rather reaffirms it. While upholding the acquisition by a steel company of the assets of a fabricator against the contention that the resulting vertical integration was illegal *per se*, this Court explicitly distinguished the offenses charged in the present case as involving a combination with the purpose and intent of restraining commerce, and reaffirmed the holding that the existence of vertical integration cannot insulate such conduct from the antitrust

laws. In any event there is here no real integration either of ownership or operation, but simply the existence of stock control by a manufacturer (CCM) and its president (Markin) of the ultimate consumers of the manufacturer's products—the taxicab operating companies.

ARGUMENT

I

Appellees Have Engaged in a Conspiracy Unreasonably to Restrain and Monopolize Interstate Trade by Acquiring Control Over the Principal Taxicab Operating Companies in Certain Leading Cities and Causing These Companies to Purchase Their Taxicabs Exclusively from Appellee CCM

The evidence leaves no room for dispute that CCM and Markin have acquired control of the cab operating companies here involved. Markin is sole owner of Cab Sales; CCM owns a majority interest in Parmelee which in turn owns all the stock of National Transportation, Inc., Yellow Cab of Pittsburgh, and Yellow Taxi Company of Minneapolis (R. 90, 94). And Parmelee has effectively controlled Yellow through its ownership of Chicago Yellow stock and other means (supra, pp. 29-34). The record also affirmatively shows by contemporaneous statements of the parties that the control so acquired was part of a deliberate, calculated scheme to assure a protected market for CCM cabs by excluding other manufacturers from sales to the controlled operating companies. The probative facts stated in the opinion of the court below (which embodies its only

findings) are not at variance with those we have set forth. But a number of findings of ultimate fact which we have assigned as error (Assignments 4, 5, 6, 8, 10, 11, 14, 17, 18, R. 106-7) cannot, it is submitted, stand in the face of contrary evidence which the court apparently overlooked or failed properly to appraise.[29]

a. *Markin's capacity in planning the formation of Parmelee*

The trial judge found that "in connection with Parmelee's formation and the preceding negotiations Markin, aside from discussions concerning CCM's purchase of Parmelee's preferred shares, acted in his personal capacity" (R. 91).

This finding appears to be predicated upon a misapprehension of the nature of the offenses alleged. The appellees are charged with a combination and conspiracy to restrain trade in the sale of cabs (R. 40-41). It makes no material difference whether one or another of them performed a particular act in furtherance of the conspiracy so long as all were parties to it. If the evidence of the participation of CCM in the conspiracy were limited to Markin's acts in the formation of Parmelee, the question whether he was acting for CCM or personally might become relevant. But the evidence is not so limited. CCM engaged in a series of transactions directly in aid of the combination. Its 1929 $1,000,000 invest-

[29] Since some of the erroneous findings are redundant, we do not discuss each one separately. But we believe that the

ment in Parmelee was made because its board of directors was of the opinion that Parmelee's acquisition of operating companies—immediate and future—would be beneficial to CCM (*supra*, pp. 10-12). A major link in the whole combination was forged by its acquisition in 1930 of a majority of Parmelee stock, at the sacrifice of CCM's creditor position (*supra*, pp. 23-26). Further evidence, were it needed, is furnished by CCM's loan to Parmelee to permit repurchase of Chicago Yellow stock and thus maintenance of control over Yellow (Gov. Exs. 170-172, R. 1239-41).

Quite apart from the materiality of the above finding, it cannot be reconciled with the evidence. It is true that Markin's purchase of Parmelee stock gave him a personal interest in Parmelee. But Markin, throughout the time when he was actively promoting the formation of Parmelee, was CCM's president and general manager and bound by contract to devote all his time and attention to the business of CCM. To conclude that Markin was thus acting only in his personal capacity is to ignore his official reports to CCM's directors and stockholders in which he stated that he had been working on a plan by which CCM "might obtain a sustained production by insuring recurring orders from large operating companies," that the contemplated plan was "essentially for the benefit of" CCM, and that

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evidence set forth in the Statement, plus that referred to in the findings which we discuss, refutes all of the findings herein specified as error.

CCM's purchase of Parmelee preferred stock, an integral part of the plan, would be "extremely advantageous" to CCM in connection with marketing its product (*supra*, pp. 10-12). Either these contemporaneous statements were false or Markin, in his promotion of the Parmelee plan, was not engaged in a purely personal venture.

When CCM modified Markin's exclusive employment contract so as to permit him to act as an adviser, for pay, to Parmelee's management subsidiary, the condition which was attached to this authorization was that he continue to "devote his efforts towards promoting the sales" of CCM cabs (*supra*, p. 12). When CCM thus modified its contract with Markin, it in effect declared that it believed that Markin, in acting as adviser to Parmelee's subsidiary, would be promoting the business and interests of CCM. We submit that the court below was plainly in error when it concluded that CCM modified Markin's employment contract because it recognized that he would be "acting in his personal capacity" in serving as adviser to Parmelee's management subsidiary (R. 92).

b. *The intent or plan of the appellees*

The trial court found that "in 1929 neither CCM, Markin nor any of the defendants formed an intent or plan to control commerce in the sale of cabs in any city or place" (R. 92-93).

This finding is flatly contradicted by evidence

showing beyond doubt that a principal purpose of the formation of Parmelee was to secure control of cab operating companies and thereby to assure a captive market for CCM cabs. Markin's motives are made clear in his statements to the CCM Board, and his testimony as to his conversations with Miller indicating that the sale of CCM cabs was a prime consideration (*supra*, p. 9). Since CCM is a corporation, its intentions must be found in the words and acts of its officers, directors and stockholders. Fortunately their contemporaneous words and acts are spread forth on the corporation's records (*supra*, pp. 9-13). In particular, the formal resolution of the CCM Board on the occasion of its initial investment in Parmelee makes its intentions plain (Gov. Ex. 2, R. 971):

> WHEREAS, in the opinion of this Board of Directors the acquisition by Parmelee Transportation Company of a substantial interest in the stocks of Yellow Taxi Corporation, New York, of Chicago Yellow Cab Company, Inc., and of The Parmelee Company and the possible future acquisition of interests in other operating companies, will be of substantial benefit to this Company; and
>
> WHEREAS, certain of the stockholders, directors and officers of this Company are prepared to assist in the financing of the Parmelee Company; * * *

And Sisto & Co., the then controlling stockholder of CCM, financed Parmelee and has been credited by Markin with having insisted upon the CCM and

Markin investments in Parmelee, as well as the employment of Markin as an "adviser" to the new enterprise (R. 917).

To reach its conclusion that there was no "intent or plan" to control commerce in the sale of cabs the trial court had to ignore all this evidence. Instead of viewing the conspiracy as a whole (see *United States* v. *Patten*, 226 U. S. 525, 544), it appears to have viewed each of the myriad of transactions in this record as though it were wholly separate from and unrelated to any of the other transactions. Thus in viewing Markin's actions in the forming of Parmelee, the court below tried to divorce them from the fact that Markin was and is President, General Manager, a substantial stockholder and a director of CCM. In looking at Parmelee's actions in acquiring cab operating companies, the trial court disregarded the purposes of Parmelee's formation, the composition of its board of directors, and the interest of its founders in CCM. The court noted (R. 92) that Yellow commenced purchasing CCM cabs after the formation of Parmelee, but failed to find any connection between the two events despite the fact that the initial sale of 1000 CCM cabs to Yellow was a part of the plan for the formation of Parmelee as reported by Markin to the CCM Board. Only by such an artificial compartmentalization of the evidence could the court below escape the irresistible inference that there was formed in 1929 a deliberate plan to obtain control of cab operating companies and to compel them to purchase CCM cabs.

c. CCM's power over Parmelee and its affiliates in 1929

The trial court found that "in 1929 neither CCM nor Markin possessed the power to compel Parmelee or any of its affiliates to purchase only CCM cabs" (R. 92).

At the outset it should be noted that even if the above finding were supported by the evidence it would not establish a defense to this action. Lack of power to carry out a conspiracy is no defense under the Sherman Act. *United States* v. *Socony-Vacuum Oil Co.*, 310 U. S. 150, 225. Indeed, conspiracies under the Act "are not dependent on any overt act other than the act of conspiring" (*ibid.*). Moreover, Parmelee is a defendant in this suit and a party to the conspiracy; it is not necessary to show that the other conspirators could force Parmelee to perform its part in the conspiracy or even that there was an express agreement by Parmelee to do so. A conspiracy may rest upon an informal understanding as well as upon a formal agreement. *Direct Sales, Inc.* v. *United States*, 319 U. S. 703. It is enough that CCM, Markin, Parmelee and the other appellees acted in concert in furtherance of the common plan; no showing that adherence was compelled is necessary. *Federal Trade Commission* v. *Pacific States Paper Trade Association*, 273 U. S. 52, 62.

The finding, however, cannot be squared with the evidence. It can rest only on the assumption that the failure of Markin and CCM to possess a ma-

jority of the voting stock of Parmelee conclusively negatives control. But that assumption fails to take into account the realities of the situation. Parmelee was not, after all, organized merely as a holding company for taxicab operating companies. It was organized pursuant to a specific plan worked out by Markin, Miller, CCM, and Sisto & Co. which contemplated the sale of CCM cabs. The conspirators installed the first management of Parmelee and that management was clearly aware of its mandate. Miller was given the Parmelee presidency; two members of CCM's Board were placed on the Parmelee Board; and Markin was hired as "adviser" to Parmelee's management subsidiary. Sisto (which then dominated CCM's Board), CCM and Markin all became substantial stockholders of Parmelee.[30] Parmelee was actually organized by Sisto and the early meetings of its directors were held in Sisto's office.[31] One of its first corporate acts was to approve without modification the elaborate plan presented to it for the acquisition of cab operating companies.

It can scarcely be argued at this late date that control of a corporation can only be secured by a majority of the voting stock. A cohesive minority can and frequently does secure control regardless of the wishes of a disorganized or indifferent ma-

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[30] The trial judge laid great stress upon the fact that CMM refused to buy common stock, and instead took non-voting preferred (R. 98) but disregarded the fact that the preferred was convertible into common (Gov. Ex. 6, R. 1520).

[31] R. 919-920; Gov. Ex. 4, R. 975, Gov. Ex. 5, R. 982; Gov. Ex. 6, R. 984; Gov. Ex. 7, R. 987.

jority. As pointed out in *Detroit Edison Co.* v. *S. E. C.*, 119 F. 2d 730, 739 (C. A. 6), certiorari denied, 314 U. S. 618, "Ownership of corporate shares without appreciable corporate control and control of corporate wealth without appreciable ownership has become a natural phenomenon of our economic system."[12] In this case, there can be no question but that CCM and Markin had *de facto* control of Parmelee despite their lack of direct voting control during Parmelee's first year of existence.

d. *The motives for the acquisition by CCM of stock control of Parmelee*

The trial judge found that the three-way transaction by which Markin received CCM stock, Parmelee acquired Motor Cab Transportation Co., and CCM obtained a majority of Parmelee stock (see Statement, *supra*, p. 23) "was not related to any sales of CCM cabs to Parmelee or any of its taxicab operating affiliates and no accompanying intent or plan connected with any control over commerce in the sales of cabs existed" (R. 94).

On its face this transaction appears to be one in furtherance of the original conspiracy to control cab operating companies. When Parmelee was organized CCM's investment in it was explicitly made in anticipation of "the possible fu-

[12] Compare *American Gas & Electric Co.* v. *S.E.C.*, 134 F. 2d 633 (C.A. D.C.), certiorari denied, 319 U.S. 763. And see Public Utility Holding Company Act of 1935, § 2(a) (7), 15 U.S.C. 79b (7); Investment Company Act of 1940, § 2(a) (9), 54 Stat. 791-792, 15 U.S.C. 80a-2(a) (9).

ture acquisition of interests in other operating companies" (Gov. Ex. 2, R. 971). The Motor Cab transaction furthered that end and, at the same time, gave to CCM an outright majority stock interest in Parmelee which would assure that the operating companies controlled by Parmelee would remain loyal CCM customers. Although Parmelee had been subject to CCM's practical control from the beginning, this transaction made such control not only direct but permanent. As has been pointed out, (*supra*, p. 25), the collapse of Sisto eliminated it as a factor in common ownership and control of CCM and Parmelee, and created a situation making direct stock control of Parmelee important to CCM.

Certainly the vesting in CCM of control over Parmelee was uppermost in the minds of the parties to this transaction. The CCM stockholders' resolution approved "the acquisition of a controlling interest in Parmelee" (Gov. Ex. 64, R. 1096). The President of Parmelee described the transaction to the Parmelee Board as the result of "negotiations * * * looking toward a closer affiliation of these two companies" (Gov. Ex. 61, R. 1080). Quite apart from these contemporaneous characterizations of the transaction, the history of CCM's relation to Parmelee must be considered. The advantage to CCM from sales to Parmelee-controlled companies had been a principal factor both in Parmelee's formation and CCM's initial investment in it, and this contemplated advantage had become a reality through immediate substantial orders

for CCM cabs. A finding that this acquisition by CCM of control of Parmelee was "not related" to cab sales could, in these circumstances, be made only if there were convincing evidence of other overriding business reasons for the transaction. But there was none.

The trial court gave a plausible reason for Parmelee's participation in the transaction—its desire to ease its financial strain by retiring the $1,442,000 of debentures and $1,000,000 in preferred stock then held by CCM. But we are here concerned with CCM's motives. CCM traded these senior securities in Parmelee for common stock at a time when that company was in an extremely precarious financial condition (*supra*, p. 26; R. 810, 927). The court suggested no business reason why CCM was willing to enter such a disadvantageous arrangement, and none can well be imagined except a desire to maintain control of Parmelee for the profit of CCM.

The trial judge stressed a number of other considerations (R. 93), none of which adequately explains CCM's action. It noted that the then controlling stockholders, the Raskob-duPont group, wished Markin to get rid of Motor Cab Transportation Company so as to remove him from competition with CCM customers in New York City. But this does not explain why the Raskob-duPont group suggested Parmelee as the prospective buyer when Parmelee had no cash (R. 812), and Markin was unwilling to accept Parmelee stock. Nor does it

explain how it would relieve CCM of embarrassment to have its New York customers competing with companies owned by Parmelee rather than Markin, since the major ownership in Parmelee was to pass to CCM.[33]

The crux of the matter is thus exposed. To accept the trial court's finding it is necessary to accept the hypothesis that CCM (or the Raskob-duPont group controlling it) was so anxious to get Markin out of Motor Cab that it was willing for that reason alone to give Markin a large block of CCM stock and surrender CCM's creditor position in Parmelee in exchange for Parmelee common of extremely doubtful value. And it is necessary to conclude that CCM was by 1930 no longer motivated by the desire for a controlled cab market which had led it to invest $1,000,000 in Parmelee in 1929.

If the trial court's hypothesis is rejected, as we think it must be, the inescapable conclusion is that the transaction was what it appeared on its face to be—a method of assuring CCM's control over cab purchases by securing to CCM the majority of Parmelee stock, and at the same time adding Motor Cab to the Parmelee stable of controlled operating companies. It was nothing more nor less than a " 'deliberate, calculated purchase for con-

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[33] In this connection it is interesting to note that Markin and his associates acquired control of Checker the following year, although Checker was also competing with a CCM customer—Yellow (*supra*, p. 20).

trol.'" *United States* v. *Yellow Cab Co.*, 332 U. S. 218, 228; *United States* v. *Reading Co.*, 253 U. S. 26, 57.

c. *The compulsion exerted upon the operating companies to buy CCM cabs*

The trial judge found that "the proof [does not] show that the purchases of CCM's purpose-built cabs were made under compulsion" (R. 99).

As was the case with the other findings here reviewed, we think the trial judge was able to reach this finding only by disregarding conclusive evidence to the contrary. The trial judge relied upon testimony by officers of the appellees indicating that CCM cabs have received acclaim, that CCM has been the only manufacturer continuously making purpose built cabs since 1929, and that operating companies usually replace their fleets with cabs of the same manufacture. These considerations might explain an independent decision by an operating company to buy CCM cabs if such a decision were possible. But they do not explain the dramatic coincidence of the acquisition of control by Parmelee of Yellow and the Pittsburgh companies with the decision of those companies to shift to CCM cabs (*supra*, pp. 13, 16). Nor do they explain the decision of the Minneapolis Parmelee subsidiary, immediately after its formation, to replace its largely non-CCM fleet with CCM cabs. (*supra*, p. 17). These sudden shifts to CCM cabs are not only contrary to the usual practice, as found

by the trial court (R. 99), of sticking to one manufacturer but in their timing are manifestly indicative of control and compulsion.

Perhaps the most striking example of the exertion of the power to compel cab purchases is found in Yellow's initial order for 1000 cabs from CCM. As has been pointed out, this order was part of the plan for the organization of Parmelee. Even prior to its organization, the conspirators were able to give CCM assurance of an order for 1000 cabs, an order which materialized immediately after Parmelee was formed (*supra*, pp. 11, 13). The inference of compulsion is strong. If there were no compulsion, the appellees could presumably produce evidence to show that the purchase was in fact an independent act. The record is bare of such evidence.[34]

This is not the only instance of Yellow's subjection to outside pressure. There were also the 1934 director rebellion which led to the replacement of two Chicago Yellow directors on Markin's personal demand, and the ultimatum by Yellow officers to Markin which specified the conditions on which CCM cabs would be considered, followed by their complete capitulation on the following day (*supra*, pp. 30-33).

Each of these incidents is an overt manifestation of control being affirmatively exercised. But

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[34] Samuels, an officer of Yellow, testified at length as to his satisfaction with CCM cabs, but nowhere stated or implied that the 1929 purchase was on Yellow's own initiative.

more subtle control can result from the mere existence of the power. Thus, for example, Markin is the owner of Cab Sales and Cab Sales is a CCM customer. It is doubtful if Markin, the President and principal stockholder of CCM, finds it necessary explicitly to direct the operating officials of Cab Sales to buy CCM cabs. But the compulsion arises as a direct consequence of Markin's ownership.

The same may be said of the Parmelee subsidiaries. True, in the beginning the device of management contracts was used to assure day to day control. These contracts delegated to a Parmelee subsidiary (of which Markin was adviser) the authority to supervise cab purchases. But after the pattern of control was established such a device became unnecessary and fell into disuse (except in the case of Yellow which is not wholly owned by Parmelee). The operating officials of the subsidiaries are not unaware of CCM's majority stock control in Parmelee. Under such circumstances it is absurd to suggest that those officials could exercise independent business judgment on cab purchases.

The record also makes plain that of late years the operating companies have been left no voice in their own affairs—even on minor matters. The pattern of domination applies not only to important matters like cab purchases (Gov. Ex. 328, R. 1346) but to a host of minor questions (see, e.g., Gov. Exs.

273-297 (R. 1318-1327), 336-351 (R. 1351-1355), 355 (R. 1358)).

In addition to disregarding the evidence of the exercise of control over the operating companies, the trial court has ignored the consequences of that control. From 1929 to 1942 CCM was able to sell the controlled companies 16,996 cabs and was able to sell all other companies only about 12,264 cabs. The court found this as a fact (R. 96); yet it appears to have rejected the obvious inference that CCM's striking success in this segment of the cab market was a result of the exclusion of competition. We think it clear that CCM sold 16,996 cabs to the controlled companies because, and only because, those companies were compelled to buy CCM cabs.

II

The Unreasonable Restraint and Monopolization of a Substantial Segment of Interstate Commerce Here Achieved Cannot Be Sustained as Merely the Consequence of Permissible Vertical Integration

The appellees have raised a number of defenses of law, each of which was considered and decided against them by this Court on the prior appeal. The prior decision left, in fact, but one question to be decided: can the allegations there considered be proved?

Thus, the appellees have contended that the amount of interstate commerce here involved is inconsequential, and that its restraint or monopolization is therefore not within the ban of the Sherman

Act. In the light of the evidence and this Court's explicit holding on the prior appeal, that contention is now foreclosed. It is undisputed that the controlled cab companies operate 5137 licensed cabs in four leading cities [35] and that their replacements for these cabs are purchased in interstate commerce. On the first appeal this Court held (332 U. S. 218, 225-226):

> it is enough if some appreciable part of interstate commerce is the subject of a monopoly, a restraint or a conspiracy. The complaint in this case deals with interstate purchases of replacements of some 5000 licensed taxicabs in four cities. That is an appreciable amount of commerce under any standard. * * *
>
> Likewise irrelevant is the importance of the interstate commerce affected in relation to the entire amount of that type of commerce in the United States. The Sherman Act is concerned with more than the large, nation-wide obstacles in the channels of interstate trade. It is designed to sweep away all appreciable obstructions so that the statutory policy of free trade might be effectively achieved.

In the face of this holding it is too late now to argue that the substantial interstate business of supplying the cab needs of the operating companies here involved is outside the antitrust laws.

It is likewise too late to argue that the exclusion

---

[35] 1932 in New York City, 2595 in Chicago, 485 in Pittsburgh and 125 in Minneapolis (R. 94-95).

of cab manufacturers other than CCM from the opportunity of selling to the controlled companies is a permissible restraint. This Court held that (332 U.S. at 226):

> By excluding all cab manufacturers other than CCM from that part of the market represented by the cab operating companies under their control, the appellees effectively limit the outlets through which cabs may be sold in interstate commerce. Limitations of that nature have been condemned time and again as violative of the Act.

And the restriction upon the freedom of the cab operating companies to select their own cab suppliers was likewise explicitly held illegal (p. 227).

The appellees make one further defense—that the acquisition of control of the operating companies is legally unassailable on the theory that it was simply the development of permissible vertical integration. But this argument too was decisively rejected (332 U.S. at 227):

> The fact that these restraints occur in a setting described by the appellees as a vertically integrated enterprise does not necessarily remove the ban of the Sherman Act. The test of illegality under the Act is the presence or absence of an unreasonable restraint on interstate commerce. Such a restraint may result as readily from a conspiracy among those who are affiliated or integrated under common ownership as from a conspiracy among those

> who are otherwise independent. Similarly, any affiliation or integration flowing from an illegal conspiracy cannot insulate the conspirators from the sanctions which Congress has imposed. The corporate interrelationships of the conspirators, in other words, are not determinative of the applicability of the Sherman Act. That statute is aimed at substance rather than form. See *Appalachian Coals, Inc.* v. *United States*, 288 U. S. 344, 360-361, 376-377.
>
> And so in this case, the common ownership and control of the various corporate appellees are impotent to liberate the alleged combination and conspiracy from the impact of the Act.

Since the appellees cannot well avoid the effect of the above explicit language, they are forced, in effect, to the farfetched argument that the rule of the *Yellow Cab* case was modified or overruled in two cases decided at the very next term of the Court—*United States* v. *Paramount Pictures, Inc.*, 334 U. S. 131, and *United States* v. *Columbia Steel Co.*, 334 U. S. 495. The opinions in those cases not only are lacking in any indication of a withdrawal from the position taken in the *Yellow Cab* case, but constitute a reaffirmation of it.

In the *Paramount* case the Court held that vertical integration of producing, distributing and exhibiting motion pictures is not illegal *per se* and that the legality of vertical integration "turns on (1) the purpose or intent with which it was con-

ceived, or (2) the power it creates and the attendant purpose or intent" (334 U. S. at pp. 173-174). In elaboration of the first test, the Court said that vertical integration "runs afoul of the Sherman Act if it was a calculated scheme to gain control over an appreciable segment of the market and to restrain or suppress competition, rather than an expansion to meet legitimate business needs." This is in the most exact harmony with the quoted portions of this Court's decision in the *Yellow Cab* case.

The evidence in the present case conclusively shows a calculated scheme to gain control over a very substantial segment of the market for cabs in certain major cities and to restrain or suppress competition for that segment of the market. The record at the same time is barren of evidence that the bringing of the operating companies under control of CCM was an expansion to meet legitimate business needs.[36] Under the test established in the *Paramount* case, appellees' combination clearly stands condemned.

Nor does *United States* v. *Columbia Steel Co.*, 334 U.S. 495, modify or throw doubt on the decision

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[36] The failure of the appellees to attempt to develop such evidence is perhaps a result of the fundamental inconsistency of the positions which they argue. If, as they have contended, the acquisition of Parmelee control by CCM and Checker control by Markin had no purpose in relation to CCM's cab sales, then it would be hard to establish that those very acquisitions were a "normal expansion to meet the demands of a business growing as a result of superior and enterprising management * * *." (*Yellow Cab* opinion, pp. 227-228).

in *Yellow Cab*. The Court reiterated (pp. 524-525) that vertical integration is not "as such without more * * * violative of the Sherman Act." But the Court, far from disapproving the doctrine of the *Yellow Cab* case, specifically cited the case as an example of a factual setting in which an unreasonable restraint exists. Thus the Court said (p. 522) that where a complaint "charges such an unreasonable restraint as the facts of the Yellow Cab case show, the amount of interstate trade affected is immaterial in determining whether a violation of the Sherman Act has been charged."

Even if the legal issues here presented were not foreclosed by the prior appeal, the decision in *Columbia Steel* would not suggest a different result. In *Columbia Steel* it was held that under the circumstances there involved acquisition by United States Steel Corporation of the assets of Consolidated Steel Corporation, a steel fabricator located in California, did not violate the Sherman Act. The Court in reaching this conclusion considered at length the particular setting in which the Consolidated acquisition was conceived and consummated. Among the facts thus considered were that United States Steel had purchased a short time earlier, with Government approval, a war-built West Coast plant (Geneva) with mammoth rolled steel capacity; that United States Steel's bid for Geneva provided that it would erect a plant in California which would absorb part of Geneva's

output (which potentially greatly exceeded the estimated market demand); and that United States Steel, which had no fabricating plant in the West Coast area, had prepared plans prior to World War II for erecting such a plant.[37] The Court concluded from these and other facts that Consolidated's acquisition reflected a normal business expansion unaccompanied by intent to accomplish an unreasonable restraint of trade, and that the acquisition would not in and of itself effect such a restraint.

Even a superficial comparison of the facts of *Columbia Steel* with those of the instant case reveals decisive differences. This case lies wholly outside the problem which the Court believed to be posed in the *Columbia Steel* case (see p. 526), namely, whether the Sherman Act constitutes a bar to a business "entering into different stages of production." In *Columbia Steel* the Court found a normal expansion which rounded out the existing integration of United States Steel's productive operations by permitting it to manufacture on the West Coast finished goods which it was already manufacturing elsewhere. Here there is no question of integrating stages of production, but merely an acquisition of control over the ultimate consumers of taxicabs in order to capture the market represented by their cab purchases.

The effect of appellees' combination is to eliminate all play of competitive forces with respect to

[37] 334 U.S. 495, at pp. 501, 503-505, 508-509.

the movement of a product from the producer to the consumer.[38] In the situation which was before the Court in *Columbia Steel*, on the other hand, the rolled steel, the purchase of which the acquisition of Consolidated removed from the field of competition, constituted that company's raw material, and it had to market its finished product in competition with the products of many other concerns.

There are other important differences between appellees' combination and United States Steel's acquisition of the assets of a previously independent concern.

Where, as in *Columbia Steel*, no outside ownership interest survives the acquisition, intent to restrain trade can be found only in the intent with which the acquisition was made. In other words, the holding in *Columbia Steel* was, as we understand it, that if Consolidated's acquisition did not constitute an offense against the Sherman Act, no violation of the Act might be predicated upon the fact that the 100% subsidiary of United States Steel organized to continue Consolidated's business would presumably purchase its rolled steel requirements from its parent, rather than from its parent's competitors. See 334 U. S. 495, 523. In

[38] The trial judge was apparently of the view that local regulation of taxicabs may be relied upon to compel the use of efficient and reasonably priced cabs (R. 100). Even if the premise of this conclusion were correct, it could scarcely be a defense to a suit for violation of the Sherman Act. Congress has not delegated to municipalities the responsibility for keeping the channels of interstate commerce free of monopoly and unreasonable restraint.

substance there was but one entity after the acquisition of Consolidated. But the present case involves a combination to utilize stock control and other means to compel companies in which there are large outside ownership interests to purchase the cabs needed for their operations, not as a free exercise of business judgment, but in furtherance of the interests of a particular cab manufacturer. Such conduct is almost declarative of intent and purpose to restrain trade.

The facts as to both Yellow and Cab Sales illustrate the extent to which combination and conspiracy were, in the present case, central to the restraints which were imposed. CCM has never had more than a 61.75% stock interest in Parmelee and Parmelee's stock interest in Yellow has ranged from about 26% to about 30%. CCM's ownership interest in Yellow has therefore been only a little over 18%. Nevertheless the actual control over Yellow's cab purchases, and the structure of such control, established when appellees' combination was first formed, have ever since been fully maintained. As to Cab Sales, appellees' control over Yellow was used to cause Yellow to loan, through subsidiaries, $700,000 to Cab Sales to enable it to acquire the second largest cab operation in Chicago. And Markin's ownership of Cab Sales assured that the cabs which it purchased should be CCM cabs. So CCM's 18% interest in Yellow has been the lever by which it has secured a monopoly of the

business of supplying the cab requirements of Yellow and Cab Sales.

From what we have said, it is evident that the affiliations existing among the appellees have none of the characteristics of a vertically integrated enterprise. The business of carrying passengers for hire is hardly a normal extension or expansion of the business of manufacturing automotive vehicles. In addition, the operating companies are not separate entities in form only; they are to a large extent separately owned. The compulsion upon them to buy their cabs from CCM therefore cannot be defended upon the ground that it is merely a manifestation of the normal tendency of a subsidiary to buy from its parent whenever possible (compare *Columbia Steel* opinion, p. 523). On the contrary, stock control, deliberately acquired for the purpose, has been used to exclude competing manufacturers and to deprive nominally independent operating companies of the freedom to pick their cab suppliers. In the words of this Court's prior opinion in this case, "restraint of interstate trade was not only effected by the combination of the appellees but was the primary object of the combination." 332 U. S. at p. 227. As was the case in *United States v. Crescent Amusement Co.*, 323 U. S. 173, 189, "Common control was one of the instruments in bringing about unity of purpose and unity of action and in making the conspiracy effective."

III

Divestiture of All Common Interest or Control in CCM and the Operating Companies is Necessary in Order to Dissipate the Restraints and Monopolization of Trade Effected by Appellees' Conspiracy

The consistent purpose of the appellees to monopolize and restrain competition in the sale of cabs coupled with the structure of corporate control which they have erected makes it plain that injunctive relief would be insufficient to restore the segment of commerce here involved to the channels of free competition. It is obvious that if Markin continues as an officer and a major stockholder of CCM and at the same time retains ownership of Cab Sales, manufacturers other than CCM will continue to be excluded from competition for Cab Sales' business. By the same token, so long as CCM controls Parmelee, neither Yellow nor the Parmelee subsidiaries will be free to exercise independent business judgment in purchasing taxicabs; they will perforce buy from CCM. Here, as in *Schine Chain Theatres* v. *United States*, 334 U. S. 110, 128, "an injunction against future violations is not adequate to protect the public interest."

If the court's decree is to "effectively pry open to competition a market that has been closed by defendants' illegal restraints" (*International Salt Company* v. *United States*, 332 U. S. 392, 401), the combination must be dissolved. The language of

the Court in *United States v. Crescent Amusement Company*, 323 U. S. 173, 189-190, is apposite here:

> Common control was one of the instruments in bringing about unity of purpose and unity of action and in making the conspiracy effective. If that affiliation continues, there will be tempting opportunity * * * to continue to act in combination * * *. The proclivity in the past to use that affiliation for an unlawful end warrants effective assurance that no such opportunity will be available in the future.

CCM should be required to divest itself of all interest, direct or indirect, in Parmelee and the operating companies. Parmelee and the operating companies should be under a like direction with respect to CCM. Markin, and anyone else having an interest in both CCM and operating companies, should be put to a choice of affiliation, and required to destroy all connection as a stockholder, officer or employee either with CCM, or with Parmelee and the operating companies, as the case may be. Only by the surgery of divestiture can the monopoly and restraint of competition fostered by this conspiracy be eliminated.

CONCLUSION

For the foregoing reasons the judgment of the court below should be reversed.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1949

No. 22 22

THE UNITED STATES OF AMERICA,
Appellant,

v.

YELLOW CAB COMPANY, *et al.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

BRIEF FOR APPELLEES

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I. The Government's theory that the purchase of an outlet with the intent to assure a market constitutes a violation of the Sherman Act, regardless of the reasonableness of the resulting restraints, is opposed to the Columbia Steel case and misapplies the pleading decision of the first Yellow Cab case. When only reasonable restraints result, no Sherman Act violation occurs unless the purchase is aimed at a suppression of competition 39

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

BRIEF FOR APPELLEES

OPINION BELOW

The opinion of the District Court for the Northern District of Illinois (R. 89) is reported at 80 F. Supp. 936. An earlier opinion of the District Court, dismissing the complaint under Rule 12(b) of the Rules of Civil Procedure for failure to state a claim, is reported in 69 F. Supp. 170, and the opinion of this Court on the appeal taken from the judgment of dismissal is reported in 332 U. S. 218.

JURISDICTION

The judgment of the District Court was entered on November 10, 1948 (R. 104). Petition for appeal was filed and allowed on January 7, 1949 (R. 104, 108). The jurisdiction of this Court is conferred by Section 2 of the Expediting Act of February 11, 1903, 32 Stat. 823, 15 U. S. C. 29, as amended by Section 17 of the Act of June 25, 1948, 62 Stat. 869. Probable jurisdiction was noted on March 7, 1949 (R. 1674).

STATUTE INVOLVED

The Act of July 2, 1890, 26 Stat. 209, known as the Sherman Act, provides in part:

> "Sec. 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal: * * *" (15 U. S. C. 1).
>
> "Sec. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, * * *" (15 U. S. C. 2).

QUESTIONS PRESENTED

1. Whether the evidence sustains the findings of the District Court that the appellees did not conspire to suppress competition, in interstate sales of taxicabs, of automotive manufacturers other than CCM.

2. Whether, if the appellant's specifications of error permit review, unreasonable restraints on interstate sales of automobiles used as taxicabs result from CCM's affiliations with five cab operating companies.

3. Whether, in the event of reversal, divestiture should be directed by this Court without affording to the District Court opportunity, after full hearing, to determine the requisite relief.

The Government does not urge error (Govt. Br., p. 5, note 1) as to the findings of the District Court that no conspiracy existed among the appellees relative to the transfer by Parmelee of railroad passengers and their luggage between Chicago railroad stations.

BACKGROUND OF LITIGATION

This action was originally conceived as an attack on the license rights of Yellow and Checker under the 1937 ordinance of the City of Chicago, and as a method of avoiding the decision of the Illinois Circuit Court sustaining these rights (*Yellow Cab Co.* v. *City of Chicago*, decided February 25, 1946, Feinberg, *J.*, Ex. D-5, R. 1608, affirmed by the Illinois Supreme Court, 396 Ill. 388, Ex. D-6, R. 1609). To invoke federal jurisdiction, the concept was evolved that taxicab services in Chicago were an adjunct to interstate railroad transportation, and to spread additional color of interstateness, sales of taxicabs by CCM, a Michigan manufacturer, and transportation by Parmelee of railroad passengers and their luggage between Chicago railroad stations were linked with these taxicab services. When the decision of this Court, *United States* v. *Yellow Cab Co.*, 332

U. S. 218, removed from this action its supposed primary basis of federal jurisdiction, the furnishing of taxicab services in Chicago, this action was left only with its appendages, the sales of cabs by CCM and the interstation transportation of Parmelee. Since the Government has abandoned on this appeal its charge respecting Parmelee's interstation transportation (Govt. brief, p. 5, note 1) the only surviving remnant is the sales of cabs by CCM.

This evolution explains the shifting theories of the Government during the course of this action and indicates how the Government by retrospective speculation and disregard of basic facts, chronology, and economic and business conditions, has endeavored to discover a pattern of supposed conspiracy to meet its preconceived theories. The shifts in the Government's position have finally resulted in placing it in the curious position of championing against CCM, an extremely small automotive manufacturer, the "giants of the industry," General Motors, Chrysler, Ford and Packard.

STATEMENT OF THE CASE

CCM at January 1929

By January 1929 CCM had been a manufacturer of purpose-built taxicabs for about seven years and had sold an aggregate of 8,019 cabs, or an average of 1,356 cabs a year (R. 803; Ex. D-13, R. 1628).

It produced in 1928 its Model K cab (illustrated in Ex. D-9, facing R. 1612) which had the appearance of a town-car and was widely acclaimed as the outstanding purpose-built cab of its day (R. 804-805, 838-839, 910; Ex. D-9, R. 1612).

CCM's sales were usually on an installment basis under conditional sales contracts and were financed by discount corporations, including Commercial Credit Corporation and Fisk Discount Corporation. Even prior to 1929, purchasers of cabs from CCM sometimes defaulted on their installments, necessitating financial losses and adjustments by CCM. (R. 815, 925; Ex. 1, R. 968; Ex. 42, R. 1059-1062; Ex. 73, R. 1109-1110; Ex. 88, R. 1126-1127)

Yellow at January 1929

The "Yellow" organization traces back to 1910. By 1925, its components included (1) Yellow Cab Manufacturing Company which manufactured the "Yellow" purpose-built cab, (2) Yellow, which conducted cab operations in Chicago, and purchased its cab requirements from Yellow Cab Manufacturing Company, and (3) Chicago Yellow, a holding company, which owned the stock of Yellow Cab Manufacturing Company and of Yellow (Ex. D-15, R. 1644; R. 832-834). From 1910 to 1925 the executive direction of these Yellow companies and a substantial stock interest in Chicago Yellow was increasingly in John D. Hertz and Hertz possessed also an important stock interest in Yellow Taxi Corporation, New York (referred to as Yellow of New York) which operated "Yellow" cabs in New York. (R. 669, 834, 837, 852-853)

Shortly before 1925 Hertz determined to withdraw from the taxicab business. He was partly motivated by the presence of force and violence in taxicab operations on the streets of Chicago, which later was strikingly illustrated by threats to kidnap his grandson and the burning of his racing stables. (R. 834-835)

In 1925 Hertz sold Yellow Cab Manufacturing Company to General Motors Corporation (R. 668, 833-834). Immediately after this acquisition, General Motors Corporation changed the name of Yellow Cab Manufacturing Company to Yellow Truck and Coach Company (R. 669, 836). That company within a short time transferred its plant from Illinois to Michigan and began to engage principally in the business of truck and bus manufacture (R. 669, 835-836). Its name was later changed to General Motors Truck Corporation (R. 836).

With the withdrawal of Yellow Cab Manufacturing Company from the production of purpose-built taxicabs, the "Yellow" cab operating companies lost their previous source of supply. By 1929 their fleets were about 3-4 years old, and they constituted available customers for another purpose-built cab (R. 669, 837, 850, 852). In this situation, CCM's Model K was a natural purchase.

Hertz, however, having sold Yellow Cab Manufacturing Company to General Motors Corporation, continued to look for purchasers for his interests in Chicago Yellow and Yellow of New York (R. 852). Hertz' interest in Yellow was represented by Charles McCullough who was Chairman of the Board of Chicago Yellow and also of The Parmelee Company, with which McCullough had been associated for many years and in which he personally possessed an important stock interest (Ex. 6, R. 1527; R. 838). Hertz' interest in Yellow of New York was represented by Ernest H. Miller who was president of Yellow of New York, president and owner of Yellow Cab Company of Newark, and generally an important and well-known figure in the field of taxicab operations (R. 747, 837, 852-853; Ex. 6, R. 1527-1528).

Early Miller-Markin Discussions

Against these circumstances of the acclaim accorded to CCM's Model K cab, the withdrawal of the Yellow companies' previous source of supply of purpose-built cabs, and Hertz' desire to sell his interests in Chicago Yellow and Yellow, the first conversations between Miller and Markin occurred. These conversations were initiated by Miller and transpired about mid-summer 1928 (R. 910-911).

Miller said that he was operating cabs in New York and Newark, that he saw CCM's new Model K cab, that he thought it was a very good cab, and that he would like to buy some. Later he said that because of finances he probably was not able to do it. Somewhat later still, he said that the cab purchases might be financed if buyers could be found for the interests of owners of Yellow, Yellow of New York and Yellow of Newark, who wanted to sell their interests. Miller thought that finances could be found, and Markin said that he would look around. (R. 910-912)

These conversations were limited to the quality of CCM's Model K cab and the possibility of the sale of stock interests in Chicago Yellow, Yellow of New York and Yellow of Newark. Miller did not, as stated at page 9 of the Government's brief, broach the idea of "forming a company to acquire stock of various taxicab companies"; nor was there any "deal to acquire stock of cab companies" (Id.). These conversations antedated the negotiations which led to the formation of Parmelee, antedated any discussions between Markin and J. A. Sisto & Co., and antedated J. A. Sisto & Co.'s public issue of CCM's securities in November 1928. Accordingly, CCM's directors were not, as also stated at page 9 of the Government's brief, familiar with these early discussions.

Negotiations leading to formation of Parmelee

Markin spoke with J. A. Sisto & Co., underwriters, concerning the possibility of financing the purchase of these three Yellow companies. Sisto replied that it might be interested in such financing. Miller then arranged an appointment at Chicago, and McCullough, Miller and Markin met. The discussions concerned the purchase price for the stock interests represented by McCullough in Chicago Yellow and by Miller in Yellow of New York. The purchase of Yellow of Newark was dropped because Miller wanted too much money for it. During the meeting, Markin asked McCullough why such interests were being sold. McCullough said that he wanted to retire from active business. Markin asked whether McCullough proposed to remain in The Parmelee Company. McCullough replied that The Parmelee Company interests also desired to sell. (R. 912-915)

The "deal" under negotiation was limited, therefore, to two cab operating companies, Yellow (whose stock was owned by Chicago Yellow) and Yellow of New York and to The Parmelee Company which was engaged in the separate business of interstation transfer of railroad passengers and their luggage. Markin specifically testified that only "one deal" was involved and not a plan to acquire cab operating companies throughout the United States (R. 614). He further testified that the deal was changed only by eliminating Newark (R. 617), and that no other cities were to be added (R. 617).

Markin reported his Chicago meeting to J. A. Sisto & Co. which turned the matter over to its statistical department and examined the properties. Sisto, in association

with two other underwriting firms, Hallgarten & Co. and White, Weld & Co., investigated the proposed purchase and evolved the operating and financial structure of Parmelee. Markin did not participate in any of the discussions among the underwriters or their counsel relative to the conception or formation of the new enterprise. The conception and formation of Parmelee, including its subsidiary, Transportation Management Corporation, was entirely the underwriters' and their counsel. (R. 915-919)

As already indicated, the proposed purchase of stock interests in Chicago Yellow, Yellow of New York and The Parmelee Company, represented to Markin a limited "deal." Any suggestion that Parmelee might constitute a nucleus for acquiring other cab operating companies in the United States represented possibly the promotional technique of underwriters desiring to float its securities.

Formation of Parmelee

Parmelee was formed April 12, 1929. Its securities were publicly issued through an underwriting syndicate headed by the firms of J. A. Sisto & Co. and White, Weld & Co. (Ex. 6, R. 1520-1529).

These securities consisted of $5,000,000 of debentures, $1,000,000 of preferred shares and 250,000 common shares of the value of $4,600,000 (Ex. 4, R. 1504).

Shortly after its formation, Parmelee acquired the following (Ex. 4, R. 1495, 1503):

(1) 26 per cent of the stock of Chicago Yellow, the parent of Yellow. These were the shares which McCulloch sold for the interests represented by him.

(2) 68 per cent of the stock of Yellow of New York. These were the shares which Miller sold for the interests represented by him.

(3) 96 per cent of the stock of The Parmelee Company. These were the shares which McCulloch sold for himself and interests represented by him.

To achieve economies of operation through a single advisory staff, Transportation Management Corporation was formed as a wholly owned subsidiary of Parmelee (Ex. 7, R. 1559-1573).

Lack of control of Parmelee by CCM or Markin

On Parmelee's formation, CCM purchased $1,000,000 of preferred shares of Parmelee, without voting power (Ex. 2, R. 1477; Ex. D-16, R. 1645-1646; R. 905-906).

J. A. Sisto & Co., as part of its financing desired that CCM purchase not preferred but common shares of Parmelee and in an amount exceeding $1,000,000 (R. 917-918). Markin and others of the CCM officers and directors desired that CCM purchase not preferred shares but debentures and in an amount not more than $1,000,000. (R. 918) CCM's purchase of the $1,000,000 of preferred shares of Parmelee represented, therefore, an investment whose status was between an equity ownership of common shares and a debenture holder's creditor position.

Thus, not only had CCM no voting power in Parmelee but it refused to accept securities possessing such voting power, seeking a safer investment. The Government observes that the preferred shares were convertible into common shares. They were, and so were the $5,000,000

of debentures. The issuance price of the common shares was, however, $24.50 per share against a conversion price, both for the debentures and preferred shares, of $30 per share (Ex. 6, R. 1520, 1523, 1527). If, however, CCM were conspiring in early 1929 to acquire domination of Parmelee by deliberate calculated purchase for control, it is hardly likely that CCM would have declined the acquisition of voting equity stock in favor of non-voting preferred stock.

Markin, at the time of Parmelee's formation, owned 12 per cent of the stock of CCM (Ex. D-7, R. 1611). In connection with the organization of Parmelee, and on the insistence of the underwriters, he subscribed for and purchased 6 per cent of Parmelee's common stock (R. 917; Ex. 2, R. 1475; Ex. D-8, R. 1611-1612). Thus, obviously, Markin possessed stock control neither of CCM nor Parmelee.

It may be observed that on the prior appeal, this Court assumed a construction of the original complaint which the proof did not support. Summarizing the allegations of the original complaint, Mr. Justice Murphy said in part:

> "Parmelee Transportation Company (Parmelee) was organized in April, 1929 with 62% of its stock being owned by CCM" (332 U. S. 218, 221).

CCM did not, however, in April 1929 own 62 per cent of Parmelee's stock; CCM owned only preferred stock which was without voting power and represented only 9 per cent of Parmelee's total capitalization.

Again Mr. Justice Murphy, summarizing the original complaint, said that Markin, in January 1929, was not

only CCM's president and general manager, but also its "controlling stockholder" (332 U. S. 218, 221). So construed, this allegation also was unsupported by the proof. In January 1929 Markin owned 15 per cent of the stock of CCM, and on April 12, 1949 (the date of Parmelee's formation) only 12 per cent (Ex. D-7, R. 1611).

Nor did CCM or Markin possess any control over the officers or directors of Parmelee. Markin himself was neither an officer nor a director of Parmelee or any of its affiliates (Exs. 4-7, R. 975, 982, 984, 987; Ex. 222, R. 1290; Ex. 224-226, R. 1290).

Markin's sole connection with Parmelee, aside from his personal subscription to 6 per cent of Parmelee's common shares, was as consultant to Miller in Miller's capacity as president of Transportation Management Corporation (Ex. 7, R. 1548). Markin was employed as such consultant in his personal capacity, partly because of his expert knowledge of the taxicab field, and partly because the underwriters of Parmelee's public issue desired that the new enterprise initially have the benefit of the advice of a person whom they knew and in whom they reposed confidence (R. 916-917). Markin's contract as such consultant was for two years at a salary of $25,000 a year (Ex. 7, R. 1548-1549).

Transportation Management Corporation functioned as an advisory staff for the three operating companies affiliated with Parmelee, Yellow, Yellow of New York and The Parmelee Company, under advisory contracts (Ex. 7, R. 1559-1573).

The Government argues at page 52 of its brief that a paragraph contained in these contracts (Ex. 7, R. 1560, 1566,

1569-1570) relating to purchases in excess of $500, was not an advisory but a control device, and then assumes that such control was exercisable by CCM. This paragraph provides that purchases in excess of $500 shall not be made "without either obtaining the approval of the management corporation or instructions from the board of directors of the particular company for which such purchase is to be made." It appears from the very terms of this paragraph, however, that the directors of Yellow, Yellow of New York, and The Parmelee Company were entirely free to disregard the advice of Transportation Management Corporation and to issue such instructions as they might desire; and it is consequently obvious that this paragraph was neither intended nor functioned as a control device. But even beyond this, Transportation Management Corporation was a wholly owned subsidiary of Parmelee and had no relationship to CCM; and, consequently, Transportation Management Corporation's advisory contracts were neither available to, nor exercisable by, CCM. The real purpose of this paragraph was that the underwriters who evolved Transportation Management Corporation desired coordination of purchases to achieve mass economies and did not want any particular officer or employee of the new enterprise to make any purchases of substance, whether gasoline, tires or other important supplies or equipment, without the opportunity of obtaining the benefit of the economies of such mass purchases (Ex. 6, R. 1528). In like manner as with respect to purchases, the advisory contracts provided that no lease for the rental of premises should be made without "either obtaining the approval of the Management Corporation or the approval of the directors of the Company for which such lease is

to be made" and generally provided that "the Management Corporation will place at the services of the Companies its combined experience, advice and assistance," including accounting, purchasing, statistical, insurance, public relations, employee relations, technical problems, advertising, rental and other services. All these services were, however, subject "to the direction and control * * * of the Companies for which such services are to be rendered" (Ex. 7, R. 1564, 1568, 1573; Ex. 21, R. 1587).

Because Transportation Management Corporation provided such advisory staff, the overhead burden of the operating companies for executive personnel was decreased. Thus, for example, Miller, who continued as president of Yellow of New York, received no salary except from Transportation Management Corporation (Ex. 7, R. 1547). The general economies effected through Transportation Management Corporation are indicated by the saving to Yellow alone of $510,000 in one year (R. 245-246).

J. A. Sisto & Co. not a medium for control over Parmelee

J. A. Sisto & Co. is not a defendant and, of course, is not included in the allegations of the complaint that the "defendants" combined and conspired.

Fundamentally, however, Sisto could not have been a medium for control over Parmelee. It was an underwriter interested in the marketing of securities. Its desire and that of its associated underwriters was to sell the Parmelee securities which they underwrote and not to retain them (Ex. 6, R. 1520, 1523).

Indeed, the formation of Parmelee was, from the viewpoint of the underwriters, essentially the creation of securities to be marketed to the public. It is hardly likely that a conspiracy for control would have been rested on so slender a reed as the continued holding by an underwriter of securities which it is the function of the underwriter to sell to the public.

The 1929 orders of Yellow and Yellow of New York

During 1929, Yellow purchased 1035 Model K cabs from CCM, and Yellow of New York 1,000 (Ex. 453, R. 1458). The Government seeks to interpret these purchases as the "speedy fulfillment" of a conspiracy. They constituted, however, only overdue replacements required by Yellow and Yellow of New York for their fleets (R. 837, 839, 850, 852). Miller in mid-1928 had previously expressed the desire of Yellow of New York to buy CCM's Model K cab, and Yellow in late 1928 or early 1929, before the formation of Parmelee, sent its executives to CCM's plant to inspect the Model K cab (R. 839, 852). Both Yellow and Yellow of New York had always operated a purpose-built cab—the "Yellow" purpose-built cab (R. 833-834)—whose supply ceased with the 1925 sale of Yellow Cab Manufacturing Company and its withdrawal from taxicab manufacture. Accordingly, these 1929 purchases were not coerced but were made because Yellow and Yellow of New York needed cabs, because CCM's Model K was the outstanding purpose-built cab of the day, and because CCM provided a natural source of supply of purpose-built cabs when Yellow Cab Manufacturing Company withdrew.

CCM's 1929 Minutes

The Government argues that the minutes of two meetings of directors and one meeting of stockholders of CCM in 1929 disclose that the specific intent of CCM in "the formation of Parmelee" was "to assure a captive market for CCM cabs" (Govt. Br., p. 42).

It will be noted that the Government does not argue that these minutes disclose a specific intent to "suppress competition" of other automotive manufacturers; the Government limits its argument to a specific intent to assure a captive market for CCM cabs. The distinctions under the Sherman Act between these specific intents will be considered more fully below at pages 39-44. Not only, however, do these minutes not disclose any aim to suppress the competition of other automotive manufacturers but they do not support any inference of a specific intent to coerce, by power exerted against cab operating affiliates, long term buying of CCM cabs without regard to merit.

Against the background of existing facts, these minutes are properly interpreted as disclosing an immediate order by Yellow for 1,000 Model K CCM cabs for cash—and not on any deferred installment basis; the investment of $1,000,000 by CCM in preferred stock of substantial cab operating companies whose financial resources would enable them to pay cash for cab purchases; and the hope (and expectation) by CCM to receive, in addition to a profitable investment, the continued good-will of a potential customer for cabs. CCM was the natural supplier of Yellow and Yellow of New York's 1929 cab requirements. An investment by CCM, in connection with its 1929 orders, was certainly a normal business matter and the creation of cus-

tomer good-will. This is far short of an inference that Yellow's 1929 order was coerced and evidenced a specific intent to coerce through power long term purchases of CCM cabs regardless of merit.

The minutes of these three meetings record (Exs. 1-3, R. 967-975) that Markin indicated that "the amalgamation between some of the more important operating companies" and the investment by CCM of $1,000,000 in preferred shares of that amalgamation, might be of benefit to CCM because that amalgamation represented a potential customer for CCM cabs, and because such customer adequately financed through a public issue "would be in a position to pay cash," instead of purchasing cabs on a deferred installment basis. Thus, Markin's statements were that "He felt that in this way this Company [CCM] would be in a position to receive recurring orders from substantial operating companies that would be in a position to pay cash" (Ex. 1, R. 967-968); that CCM "might obtain a sustained production by insuring recurring orders from large operating companies" (Ex. 2, R. 969); and that he deemed CCM's investment in the preferred shares of such potential customer "advantageous in supplying a connection for marketing the products of this Corporation" (Ex. 3, R. 975).

Markin as a fiduciary (officer and director of CCM) also disclosed at these meetings his opportunity personally to make some money. That this was so understood by the directors of CCM appears from the statement of Halff, a director, that he "hoped that Mr. Markin, individually, would make considerable money as a result of his efforts" (Ex. 1, R. 968). Markin had a personal contract with CCM under which he was required to devote his full time

to the business of CCM. Markin desired an express modification of this contract so that he might be employed as a consultant to Miller. This modification was effected. (Ex. 2, R. 971-972)

The Government's argument at pages 39-41 of its brief that the District Court found that Markin acted only in his personal capacity is incorrect. Markin acted, and the trial court found that he acted, both for the benefit of CCM and in his personal capacity. He acted for CCM's benefit in arranging for the 1,000 Model K cab order from Yellow and in recommending the $1,000,000 preferred stock investment as supplying an "advantageous connection" with a potential customer. He acted personally with respect to his own subscription to Parmelee's shares and his compensation as adviser to Miller. What is important is that Markin's report of these personal relations was not as argued by the Government, the baring of the inner workings of a conspiracy, but only an appropriate disclosure by a fiduciary who might personally benefit. If, indeed, any such conspiracy had been formulated, it would be highly improbable that any conspirator under advice of counsel would record its conspiracy on the minutes of a public corporation.

Parmelee's Pittsburgh Subsidiary

The Government argues that this acquisition was in fulfillment and constitutes evidence of the original "conspiracy". The proof, however, is forcibly to the contrary—shown most strikingly by Markin's opposition to this acquisition.

In 1928, before the Miller-Markin discussions, Laird, president of Yellow Cab Company of Pittsburgh, approached Miller with the suggestion that Miller purchase this Pittsburgh cab operating company. Nothing came of the suggestion at that time. (R. 902-903) In 1929, however, after Parmelee's formation was announced by the newspapers, Laird again approached Miller with the suggestion that Parmelee purchase this Pittsburgh company (R. 903-904). Miller discussed the possibility of this purchase with Markin who advised against it on the ground that, because of its topography, Pittsburgh was not a profitable location for the operation of taxicabs (R. 921). The negotiation and purchase which ensued was conducted between Miller and Laird. Markin did not participate in this negotiation or purchase. (R. 904, 921-922)

Parmelee's subsequent purchase in 1929 of Pittsburgh Transportation Company was the result of negotiations between Houston, president of Pittsburgh Transportation Company, and Miller. Based on Pittsburgh's topography, Markin's advice was against this purchase also, and Markin did not participate in the negotiation or the purchase (R 904, 921-922).

Prior to 1929, these Pittsburgh companies had operated purpose-built cabs. Yellow of Pittsburgh used, of course, the Yellow purpose-built cab which in 1929 was no longer in supply. Pittsburgh Transportation Company had been a customer of CCM (R. 804). The 1929 purchases by these companies of an aggregate of 248 CCM Model K cabs (Ex. 459, R. 1461-1462) were, therefore, the natural purchases.

The suggestions at page 16 of the Government's brief that a provision in the purchase agreement relating to Pittsburgh Transportation Company, that between the date of the agreement and the date of closing that company would "make no unusual commitments or contract any liabilities or purchase any cabs or equipment, or any shares of its preferred or common stock except in the ordinary course of business," shows a "contemporaneous purpose to obtain for CCM a monopoly of sales in cabs to the acquired company" indicates the slender threads with which the Government attempts to draw an inference of conspiracy. The quoted provision in the purchase contract is, of course, the usual provision found in every contract for the purchase of any business; it merely assures that no substantial change in assets or liabilities or character of business will occur between the date of the agreement and the closing.

CCM's 1930 acquisition of a majority of Parmelee's common shares

The crucial question with respect to this acquisition, states the Government at page 24 of its brief, is whether its purpose was "to assure maintenance of captive outlets for CCM cabs" or whether it was "a mere by-product of investment by CCM in a business which CCM believed would be profitable." The question is not quite that—rather it is whether this was an acquisition aimed at the suppression of competition of automotive manufacturers other than CCM, or resulted from business considerations affecting Parmelee's financial condition and cab operations.

The facts evidence neither a specific intent to suppress competition nor to assure maintenance of captive outlets.

The Government argues that the testimony of the witnesses should not be believed—that this acquisition was not a result of the business considerations to which those witnesses testified. It argues that after such testimony is disregarded, a specific intent to maintain a captive market may be inferred from CCM's willingness to convert its debenture and preferred stock holdings into common shares of Parmelee—that "the measure of the importance placed by CCM upon obtaining stock control of Parmelee is what CCM was willing to pay to get control" (Govt. Br. p. 25). It argues such inference not only in disregard of such testimony but also in disregard of the fact that a major portion of the common Parmelee shares received by CCM was in exchange for the stock of a New York cab operation owned by Markin which the Raskob-duPont group, representing the dominant stockholders of CCM, insisted that Markin dispose of. The facts were these:

The business depression following the stock market crash of October, 1929 had substantially impaired Parmelee's financial condition and cab operations (R. 407, 928; Ex. 74, R. 1111). Parmelee's 1930 losses were additionally accentuated by a severe strike in Pittsburgh (R. 275).

Parmelee's annual burden of interest charges and sinking fund requirements on its debentures and cumulative dividends on its preferred stock aggregated $526,667, comprising $300,000 of interest (Ex. 6, R. 1526), $166,667 for sinking fund (Id., R. 1526-1527) and $60,000 of preferred dividends (Id., R. 1526). Of these securities, CCM owned $1,442,000 of debentures and $1,000,000 of preferred stock. The debentures had been acquired by CCM at a discount in the early summer of 1930 when J. A. Sisto & Co. as a result

of the October 1929 stock market crash and subsequent depression was in financial difficulties but before its ultimate liquidation (R. 810, 927; Ex. 64, R. 1094).

Additionally at this time Yellow of New York, a Parmelee subsidiary, was facing the competition of a fleet of 2,050 CCM Cabs in New York City which were operated by subsidiaries of Motor Cab Transportation Corporation, a company formed in early 1929 by Markin and substantially all of whose stock Markin owned (R. 813-814, 925; Ex. 62, R. 1085-1086, 1088).

In mid-1930 CCM's largest stockholder was a group represented by Raskob and duPont, which owned in excess of 34 percent of CCM's outstanding stock (R. 811, 925-926). At this time Markin's ownership of CCM's stock was only 5 percent and his ownership of Parmelee's common stock was less than 1 percent (R. 811; Ex. D-7, R. 1611; D-8, R. 1611-1612). Raskob, representing the Raskob-duPont group, asked Markin to dispose of his Motor Cab stock in order that Markin through this corporation might not be in competition in New York with Yellow of New York and other customers of CCM. Markin at first declined but Raskob insisted and it became obvious that Markin would have to comply. Raskob suggested that Markin dispose of his Motor Cab stock direct to Parmelee and, since Parmelee was unable to pay cash, that Parmelee issue to Markin, in exchange, Parmelee common shares. Markin did not wish to exchange his Motor Cab stock at this time for Parmelee common shares. Additional negotiations followed, into which Miller entered on behalf of Parmelee. Miller suggested that Parmelee's financial strain would be eased if the $1,442,000 of debentures and the $1,000,000 of preferred

shares of Parmelee then owned by CCM, carrying a current burden of interest charges, sinking fund requirements and cumulative preferred dividends, were exchanged for Parmelee common shares: (R. 812-813, 925-928) The upshot of these negotiations was that Markin, on the insistence of the Raskob-duPont group, transferred to CCM in exchange for 58,447 CCM shares all his Motor Cab stock which had a net tangible book value of $1,461,175 ($25 per share times 58,447 shares, Ex. 60, R. 1079), and CCM transferred this Motor Cab stock, plus its debenture and preferred stock holdings in exchange for 422,787 Parmelee common shares (Ex. 60, R. 1079; Ex. 61, R. 1081-1082; Ex. 64, R. 1094-1096; Ex. 70; R. 1108). Parmelee simultaneously reserved the right to use the debentures thus acquired for tender to the sinking fund in lieu of cash, as permitted in the indenture under which those debentures were issued (Ex 61, R. 1082; Ex. 62, R. 1084; Ex. 6, R. 1526).

The record is barren of any reference to cab sales with respect to this transaction. Parmelee's cab operating subsidiaries were using CCM's cabs and so were the subsidiaries of Motor Cab. Parmelee considered a combined Yellow of New York—Motor Cab operation productive of economies and a betterment of its New York cab operating position (Ex. 61, R. 1080; Ex. 63, R. 1091-1093). Nothing exists on which to predicate an intention to suppress competition of automotive manufacturers other than CCM, and nothing exists on which to predicate an intention by CCM to assure maintenance of a captive market.

Markin's subordination in CCM continued for many years. Not only were his stockholdings in CCM in September 1930 only 5 percent, while the Raskob-duPont group

stockholdings exceeded 34 percent, but the Raskob-duPont group and later the duPont interests continued until midsummer 1933 to be CCM's largest stockholders, and their representatives constituted a majority of CCM's directors (R. 816-818). In midsummer 1933 the duPonts effected a temporary ouster of Markin from CCM for a period of thirteen days, August 2-14, 1933 (R. 411, 610-611). Beginning August 14, 1933 and continuing for several years, representatives of Cord Corporation constituted the majority of CCM's directors and acted as co-signatories on CCM's checks (R. 819). Accordingly, at no time during the period under consideration was Markin in control of CCM.

Organization by Parmelee of Minneapolis subsidiary

In 1930 Yellow Cab Corporation, a taxicab operating company in Minneapolis owned by the street railways went into receivership. Claude Masters, its manager, had been employed by that company and a predecessor since 1917, and wanted to continue in the taxicab business in Minneapolis. Masters had met Markin in the early 1920's when Masters' company had bought CCM cabs. (R. 894-895)

In 1930, while Yellow Cab Corporation was in receivership, Masters, on his own initiative, came to Markin and suggested that Markin purchase Yellow Cab's assets from the receivers. Markin declined. Subsequently, in December 1930, Masters, on his own initiative, again came to Markin and informed him that Yellow Cab's assets were to be sold at auction on receivership sale on December 31, 1930. Masters' interest was to get a job. Markin referred Masters to L'Amoreaux, and L'Amoreaux, acting for Parmelee, purchased Yellow Cab's assets on this re-

ceivership sale for $16,305. (R. 894-897, 898; Ex. 48, R. 1067) Markin was not, as stated at page 17 of the Government's brief, "the moving spirit"; Masters was, and his motivation was to continue his job in the taxicab business in Minneapolis.

In January 1931, Parmelee formed Yellow Taxi Company of Minneapolis as a wholly owned subsidiary, to which were transferred the assets purchased on the receivership sale (R. 897; Ex. 48, R. 1067).

Temporary Cab Operations in Chicago of DeLuxe Motor Cab Co. and Chicago Cab Co.

In 1927, two years before the alleged conspiracy, Markin acquired the stock of DeLuxe Motor Cab Company in order to liquidate the liabilities owing by DeLuxe to Commercial Credit Corporation on unpaid installments on the purchase price of CCM cabs which had been financed by Commercial Credit Corporation (R. 815).

In 1930, DeLuxe was sold by Markin to Parmelee, and later that year its cab operation was transferred to Chicago Cab Company, a Parmelee subsidiary formed for that purpose. Chicago Cab Company continued until 1932 when its operation ceased. (R. 748, 815)

While a Parmelee subsidiary, DeLuxe bought two cabs, both of which were CCM cabs. Chicago Cab Company did not buy any cabs. (R. 748, 815)

Obviously, an intent to coerce DeLuxe into buying CCM cabs could not have underlain Markin's sale of DeLuxe to Parmelee, since DeLuxe was owned before such sale by Markin and even before Markin's ownership

was a CCM customer (R. 815). Two comments of the Government relating to DeLuxe should be corrected. At pages 17-18 of its brief, the Government suggests that covenants concerning DeLuxe in the CCM-Checker settlement of February 5, 1930 illustrate compulsion on DeLuxe through the medium of Parmelee. This settlement, however, was formulated while Markin owned DeLuxe's stock and was not imposed by Parmelee. The reference at page 18 of the Government's brief to the desirability of combining DeLuxe with Chicago Cab to "prevent some outside company from entering the taxicab operating field in Chicago," on its face relates only to cab operations and not to cab sales.

Parmelee's Present Cab Operating Affiliates

Parmelee presently owns 29.5 per cent of the stock of Chicago Yellow. Yellow, whose parent is Chicago Yellow, operates 1,595 licensed cabs out of 3,000 licensed and 950 temporarily licensed cabs in Chicago, or 1,595 out of an aggregate of 3,950. (R. 34-35; Ex. 479, R. 1467; R. 572)

Parmelee presently owns all the stock of National Transportation Company which survived the depression as the sole New York cab operating subsidiary of Parmelee, and which operates 1,932 licensed cabs out of 11,814 licensed cabs in New York City (R. 802).

Parmelee presently owns all the stock of Yellow of Pittsburgh (into which Pittsburgh Transportation Corporation was merged pursuant to an order of the Pennsylvania Public Utility Commission made August 21, 1946, R. 901), which operates 485 licensed cabs out of 690

licensed cabs in Pittsburgh. Pittsburgh has no limit on the number of licenses issuable. (R. 35, 933)

Parmelee presently owns all the stock of Yellow Taxi Company of Minneapolis which operates 125 licensed cabs out of 214 licensed cabs in Minneapolis (R. 35; Ex. 481, R. 1471).

The Government argues, at pages 29-33 of its brief, that Yellow must be considered to be controlled by Parmelee because the stock ownership of Parmelee in Chicago Yellow, which originally was 26 percent and presently is 29.5 percent constitutes "actual" control. In support of this argument of "control," the Government, out of the abundance of its investigation of all the files of the defendants since their formation (R. 333, 588), refers to the 1933 syndicate agreement between Markin and Cord Corporation, the 1933 sale of Chicago Yellow shares with option to repurchase in lieu of a loan, a letter to a trade creditor, a suggestion for a voting trust which was never accomplished, and letters concerning personal differences as to two directors of Chicago Yellow. The reference in the Cord syndicate agreement, drawn by Cord counsel while Markin was ousted from CCM, is merely to an ancillary promise of cooperation (Ex. 485, R. 1473). The reference to notice by "CCM's lawyers" during the period of Markin's ouster, concerning non-exercise of Parmelee's option to repurchase the Chicago Yellow shares sold by it, is misleading; the firm mentioned was not CCM's lawyers (R. 598, 618), and the transaction concerned was not basically a sale but a loan—the device of sale coupled with an option to repurchase was used in lieu of a collateralized loan because the governing inden-

ture prohibited a pledge of securities owned by Parmelee (R. 844, 860). The letter to the trade creditor was merely a casual credit reference (R. 1212). The phrase in the suggested voting trust which never was accomplished included Chicago Yellow shares owned by others than Parmelee (Ex. 150, R. 1221). The directors' dispute concerned merely a representation by Parmelee on Chicago Yellow's board to the extent of only two out of nine directors (Ex. 180, R. 1249; Ex. 181, R. 1249-1250). It is interesting that the prospectus prepared by Parmelee's underwriters, J. A. Sisto & Co. and White Weld & Co., stated that Parmelee acquired "a controlling interest" in the stock of Yellow of New York and The Parmelee Company but only a "substantial amount" of the stock of Chicago Yellow (Ex. 6, R. 1521). The Government's assertion of "actual" control by Parmelee over Checker Yellow is, accordingly, hardly supported by adequate evidence, but in any event it does no more than attempt to place the affiliation between Parmelee and Yellow on a level equivalent to that between Parmelee and its three wholly-owned subsidiaries in New York, Pittsburgh and Minneapolis.

Relation of CCM to Checker and Evolution of Cab Sales

Checker was formed in 1919 (R. 745). Its original stockholders were a group of taxi drivers who transferred legal title to their cabs to Checker so that under the laws which required display on the outside of cabs of the names of their legal owners, the common name "Checker" might be used (R. 746; D-19, R. 1666). Checker performed services for these driver-stockholders, such as telephone, cab-

stand, garage, repairs, insurance and the like, for which it received service payments (R. 746).

Checker, desiring a uniform purpose-built cab with which to compete with the "Yellow" purpose-built cab, was the source of CCM's first orders (R. 745, 804). Indeed, CCM's name, "Checker Cab Manufacturing Corporation" was derived from Checker, the operating unit (R. 803).

In 1925 a five year exclusive contract was made between CCM and Checker for the supply of Checker's requirements of cabs. During the latter part of the 1920's, however, unruly elements controlled the management of Checker, and disputes occurred with respect to the purchase of cabs from CCM during this five year exclusive contract. These disputes were finally settled on February 5, 1930—after commencement of an action and referral to a Special Master who found that the 1925 contract was valid and that Checker had broken it—by a substitution of a new five year exclusive contract expiring February 4, 1935 (Ex. 88, R. 1122-1134; R. 805) which was essentially a means of liquidating damages (Id., R. 1130).

The attorney for CCM in this prolonged litigation was Paul C. L'Amoreaux. The fee arrangement between L'Amoreaux and CCM was contingent, and as a method of paying L'Amoreaux for his services, Cab Sales & Parts Corporation was formed, with L'Amoreaux as its sole stockholder, to receive compensation on CCM sales to Checker during the substituted five year period. By this method, the amount of L'Amoreaux' fee depended on the practical result of his settlement of the lawsuit. (R. 806-807)

In 1931 the president of Checker was Robert McLaughlin, brother of Eugene McLaughlin who was a notorious character in Chicago (R. 753, 808). This was a period of force and violence in the operation of taxicabs on the streets of Chicago (cf. Opinion of Corporation Counsel of City of Chicago, September 11, 1945 (Ex. D-18, R. 1658). Robert McLaughlin desired to withdraw from Checker and suggested the sale to L'Amoreaux of the majority of Checker's stock (R. 807-808). L'Amoreaux thought this a good purchase, and Cab Sales obtained a substantial sum from Markin personally for this purpose (R. 808). Additionally, between 1931 and 1932, Cab Sales borrowed for this purpose an aggregate of $700,000 from Benzoline Motor Fuel Co. and The Waverly Corporation, subsidiaries of Yellow. The Benzoline loan was effected in connection with a fuel contract between Benzoline and Cab sales, and both loans were secured by all the acquired Checker stock (Ex. 95, R. 1145; Ex. 101, R. 1158-1161). The aggregate interest and fuel profit received by Benzoline from its loan until its repayment in 1943 was $394,672.66, but an additional important motivation for these loans was Yellow's desire that taxicab operations in Chicago be placed on a business level instead of a level of force and violence (R. 843-844).

Samuels' testimony, to which the Government refers at page 22 of its brief, had no reference to any sales of cabs. Samuels testified very plainly concerning Yellow's motivation to place Chicago cab operations on a business level and not on a level of force and violence. He said, "it was one thing to have people battling against you all the time on the streets and causing the business to get into the field

where people were afraid to ride in cabs. It was another thing to stabilize the industry, and we felt that by this type of loan, where we had ample security, that our competitor would feel a sort of friendly interest in us rather than an antagonistic interest in us" (R. 843). By "friendly interest," he referred to competition "on a business level and business basis"; by "unfriendly interest," he referred to "riots, disturbances, shootings and everything else that went with it" (R. 843). Samuels also testified that Yellow did not itself try to buy Checker because the Checker interests would probably have not been willing to sell their stock to Yellow, and because Yellow desired to avoid any imputation of monopoly by Yellow in Chicago cab operations (R. 843). This was a transaction, accordingly, concerned solely with operations in Chicago, and not with cab sales by CCM.

Between 1931 and 1935 Checker continued its same form of operation under which the individual drivers bought their cabs and paid service charges to Checker. During this period, however, two things occurred. First, extraordinary arrearages of service charges accumulated, of which by 1935 $297,386.65 was charged off as bad debts (Ex. D-3, R. 1599). Second, the drivers also defaulted on the purchase installments on their cabs, with the result that cabs were abandoned or Cab Sales was required to repossess them (R. 749 Ex. 93, R. 1143-1144). In 1933, as a matter of experimentation, a so-called Shapiro fleet was introduced which consisted of a number of cabs operated as a unit by Cab Sales, as distinguished from individual operation by individual drivers. This experimental operation was successful. (R. 750-752)

In 1935 Cab Sales bought 500 new CCM cabs. This was a minority of the total number of cabs operated by Checker, but Cab Sales operated these 500 cabs as a fleet while the individual drivers within Checker operated their cabs individually. Between 1935 and 1941, however, the individual drivers gradually dropped out as a result of their difficulties of operation, their inability or unwillingness to pay their service charges, and their inability or unwillingness to pay the installments on their purchases of cabs, so that by 1941 all "Checker" cabs were operated as a fleet by Cab Sales. (R. 752)

Present affiliation of Cab Sales and CCM

The flow is not from manufacturer to operating company, but vice versa. CCM owns no stock of Cab Sales. Cab Sales owns 35.7 percent of CCM's stock (R. 36). Markin owns all Cab Sales' stock and 12.2 percent of CCM's stock (R. 36).

CCM's Cab a Superior Purpose-Built Cab

A purpose-built cab is a vehicle built for the purpose of use as a taxicab. Its essential characteristics are safety, assembly of parts in such manner as to afford low maintenance cost, driver appeal and passenger appeal. (R. 758-760, 798, 819-820)

CCM has always manufactured a purpose-built cab. Its Model K, produced in 1928, established a reputation of superiority for CCM's cabs. (R. 804-805, 819, 838-839, 910; Ex. D-9, R. 1612)

Although purpose-built cabs were sometimes produced by other manufacturers during the period subsequent to

1928, CCM has been the only manufacturer continuously engaged in such production (excluding the war and reconversion periods of World War II) (R. 829, 841). The vehicles used as cabs which are produced by the large automotive manufacturers are pleasure cars converted or adapted to use as taxicabs (R. 823).

The judgment of Checker, Yellow and the cab operating subsidiaries of Parmelee has been that the CCM purpose-built cabs better serve their large city needs than converted pleasure cars (R. 760; Ex. 186, R. 1259-1260; Ex. 329, R. 1347-1348). In 1928, Yellow experimented with 10 stock model Buicks but found them "impractical" (R. 669, 837, 838)—these are the Buicks to which the Government refers at page 13 of its brief. Consideration of the purchase of cabs from manufacturers other than CCM was especially given by Yellow in 1935, during which year Yellow reviewed the specifications of the various cabs which might be manufactured for Yellow by various of the automotive manufacturers (R. 839-841). Thus, at a directors' meeting on March 28, 1935, specifications of the proposed cabs of the following manufacturers were reviewed: Auburn, Nash, Ford, Packard, Pontiac and Buick. This review indicated that the purpose-built cab of CCM was superior for Yellow's large city needs (Ex. 186, R. 1259-1260; R. 839-841). The Government argues, at pages 31-32 of its brief, that conditions suggested by Chicago Yellow with respect to Yellow's 1935 cab purchase from CCM were not included in the resolution of Yellow's directors authorizing such purchase. The record does not contain the actual contract, but the imposition of conditions by Yellow in purchase contracts with CCM is indicated by the 1936 contract which prohibited CCM from

selling during the ensuing year any later model CCM cab to others in Chicago than Yellow (Ex. 323, R. 1343).

In 1947 Cab Sales, Yellow and the Pittsburgh and Minneapolis cab operating subsidiaries of Parmelee replaced their fleets with converted Chevrolets, Plymouths, and Fords principally (R. 622, 668, 754, 901). The operating experience of these companies with these converted cars reinforced the judgment exercised by them for many years that the CCM purpose-built cabs better served their large city needs (R. 792-796, 797-798).

The Tendency to Uniform Cab Purchases by Fleets Operating in the Larger Cities of the United States

Taxicab regulations by municipalities prevail throughout most of the large cities of the United States, and in substantially all of them cab operations are conducted through fleets rather than as individual driver operations. In most of these cities a large proportion of the licenses are held by one or two operating companies (R. 822; Ex. D-14, R. 1629-1643).

These fleet operations generally utilize a uniform cab, and replacements of such fleets are commonly obtained from the same manufacturer (R. 823). Thus, the purchase and replacement of CCM cabs by Cab Sales, Yellow and the cab operating subsidiaries of Parmelee conform to the general method of purchase and replacement by all operating companies. The suggestion at pages 50-51 of the Government's brief that the "Yellow" companies' initial purchases of CCM cabs were "contrary to the usual practices * * * of sticking to one manufacturer" ignores the prior withdrawal of the Yellow companies' previous source of supply.

No Contracts Exist for Exclusive Purchases of CCM Cabs by Cab Sales, Yellow or any of the Cab Operating Subsidiaries of Parmelee

No contracts for exclusive purchases of CCM cabs exist (R. 823).

CCM never had a contract for exclusive purchases by Yellow or any of the cab operating subsidiaries of Parmelee. The only sales contracts between CCM and Yellow or the cab operating subsidiaries of Parmelee were for specified numbers of cabs with specified delivery dates. (R. 823-824, 841, 849-850).

The only exclusive purchase contracts between CCM and Checker were the five year contract of 1925 and the substituted five year contract of 1930 representing the settlement of CCM's action against Checker (Ex. 88, R. 1182).

Comparison of Cab Sales by CCM Before and After January 1, 1929

A comparison of the sales of cabs by CCM before and after January 1, 1929 discloses no increase suggestive of monopolization or restraint of cab sales. During the period 1922 through 1928, CCM manufactured and sold an aggregate of 8,019 cabs, or an average of 1,336 cabs per year. During the period 1929 through 1942, CCM manufactured and sold an aggregate of 29,260 cabs or an average of 2,090 cabs per year (Ex. D-13, R. 1628; Exs. 453-454, R. 1458; Ex. 459, R. 1461-1463). The Government's tabulation, at page 27 of its brief, of CCM cabs "purchased", represents a partial duplication since it counts separately a direct purchase from CCM of a new cab and a repurchase of that same cab in a used condition from another operating company. The period of 1942 through 1947 is omitted from consideration since CCM was, during this period, engaged

in war production and reconversion from war production and sold no cabs.

CCM's pre-1929 customers included all present cab operating companies under consideration in this action, or one or more of their predecessors, except Yellow in Chicago (R. 804, 814).

Of the 29,260 cabs manufactured and sold between 1929 and 1942, 16,996 were sold to cab operating companies mentioned in this action, and 12,264 were sold to complete outsiders. The Government's argument, at page 27 of its brief, that these statistics indicate "the extent to which CCM's welfare depends upon control of the operating companies" ignores the limits of CCM's production capacity (Ex. 246, R. 1305-1306) and the natural tendency of CCM to supply the cab requirements of its affiliates.

Comparison of CCM's Cab Sales to Total National Cab Sales, and Position of CCM in Relation to Other Automotive Manufacturers

General Motors, Chrysler, Ford and Packard are the principal manufacturers of automobiles used as cabs in the United States (R. 823).

Comparison of the sales of cabs by CCM with national cab sales and national automotive production discloses CCM as an extremely small manufacturer.

About 85,000 cabs have been in operation annually during the period since 1928 (R. 821). CCM's annual sales during this period averaged 2,090 (Ex. D-13, R. 1628).

As compared with CCM's average annual production since 1928 of 2,090 units, the total national automotive production was 5,358,420 units in 1929, 4,797,587 units in 1947,

and varied, between 1929 and 1947, from a low of 699,828 units in 1943 to the 1929 high of 5,358,420 units (Ex. D-2, R. 1597-1599).

Comparison of Total Assets and Liabilities of CCM, Parmelee and Chicago Yellow

CCM, Parmelee and Chicago Yellow are all public corporations. A comparison of the total assets and liabilities shown by their financial statements published most recently before the trial of this action, discloses that, excluding CCM's investment in Parmelee and Parmelee's investment in Chicago Yellow, CCM is the smallest of the three. CCM's total assets and liabilities, exclusive of its Parmelee shares, were $5,555,053.37; Parmelee's, exclusive of its Chicago shares, was $10,345,780.29; and Chicago Yellow's was $6,400,707.97 (R. 932-933).

Municipal Regulations of Taxicabs and Rates

The operations of taxicabs in Chicago are comprehensively regulated by ordinances of the City of Chicago (Ex. 356, R. 1362-1364; Ex. 359, R. 1368-1373; Ex. 388, R. 1404-1405; Ex. 411, R. 1429-1430). These ordinances control the physical requirements of taxicabs, as, for example, "the number, kind, type of equipment," "the color scheme and character of equipment" and "physical and mechanical standards for taxicabs and their appurtenances." They also control and establish the rates. Similarly, municipal regulations control taxicab operations and rates in New York City, Pittsburgh and Minneapolis (Ex. D-14, R. 1629-1643). The rates in these four cities and particularly Chicago and New York are among the lowest in the entire United States (Ex. D-14, R. 1632-1643).

SUMMARY OF ARGUMENT

On the prior appeal (*United States* v. *Yellow Cab Co.*, 332 U. S. 218) this Court determined merely that the complaint, as a pleading, would permit proof of a conspiracy aimed at the suppression of taxicab sales competition by automotive manufacturers other than CCM. An aim to suppress competition differs even from the purpose to assure a market by purchase of an outlet (*United States* v. *Columbia Steel Co.*, 334 U. S. 496). The Government's argument on the present appeal, that the intent motivating the affiliation of the appellees was "to assure a captive market for CCM cabs", both departs from the theory of the prior appeal and runs counter to the Columbia Steel decision. The District Court properly found that the appellees did not conspire to suppress competition in the sale of taxicabs by automotive manufacturers other than CCM, or even to coerce purchases of CCM cabs.

The Government's specifications of error do not urge that, in the absence of a proscribed specific intent, unreasonable restraints exist, and the District Court properly found that no unreasonable restraints do exist. Absent a specific intent which *per se* violates the Sherman Act when directed against an "appreciable segment of commerce", the question of reasonableness of restraint involves the nature of the restraint, delineation of the appropriate market and type of product, and other factors including, in this case, municipal regulation. The findings of the District Court against unreasonable restraint are sustained by an analysis of these factors.

Because of historical relationship, differences in affiliation, and the public character of some of the appellees, divestiture should not be directed in the event of reversal, without affording opportunity to the District Court, after full hearing, to determine the requisite relief.

ARGUMENT

I.

The Government's theory that the purchase of an outlet with the intent to assure a market constitutes a violation of the Sherman Act, regardless of the reasonableness of the resulting restraints, is opposed to the Columbia Steel case and misapplies the pleading decision of the first Yellow Cab case. When only reasonable restraints result, no Sherman Act violation occurs unless the purchase is aimed at a suppression of competition.

United States v. *Columbia Steel Co.*, 334 U. S. 495, squarely held that the purchase of an outlet with the specific purpose of assuring a market for an appreciable segment of interstate commerce did not constitute a violation of the Sherman Act. Mr. Justice Reed, writing the majority opinion, adverted to the testimony of the president of United States Steel, that "United States Steel's purpose in purchasing Consolidated was to assure a market for plates and shapes produced at Geneva" (id. p. 506); and said that "the acquisition of a firm outlet to absorb a portion of Geneva's rolled steel production seems to reflect a normal business purpose rather than a scheme to circumvent the law" (id. p. 533). Indeed, the answer in the *Columbia*

Steel case expressly admitted an intention to supply "the entire demand of the acquired business for rolled steel products" and that a "major purpose of said purchase is to supply an outlet for rolled steel products produced at the Geneva Steel Plant" (Columbia Steel Record, pp. 21-22).

On the instant appeal, the Government argues that an intent "to secure control of cab operating companies and thereby to assure a captive market for CCM cabs," constitutes a Sherman Act violation (Govt. Br., p. 41). But that is the very intent which the *Columbia Steel* case held was not a violation of the Sherman Act.

The first Yellow Cab appeal, *United States* v. *Yellow Cab Co.*, 332 U. S. 218, did not hold that a purchase of a cab operating company to assure a market for CCM cabs violated the Sherman Act. It held rather that the complaint, as a pleading, would permit proof of a conspiracy aimed at the suppression of competition of competitors of CCM. The distinction, as a matter of specific intent, is between a business purpose to assure a market, and a predatory purpose to suppress competition. The complaint in the Yellow Cab case alleged "a combination and conspiracy to restrain and to monopolize interstate trade and commerce in the sale of motor vehicles for use as cabs" (R. 8). Such allegations of "conspiracy", said Mr. Justice Murphy, are not vulnerable to a motion to dismiss the pleading when "an appreciable segment of interstate cab sales" is involved; an "allegation that such a segment has been or may be monopolized or restrained is sufficient" (id. p. 226). Mr. Justice Murphy recognized that the test of reasonableness of restraint applied to the acquisition of an assured market for the purchaser's product when he said, "The

test of illegality under the Act is the presence or absence of unreasonable restraint on interstate commerce" (id. p. 227), but left for trial the question whether restraint and monopolization were "the primary object of the combination" (id. p. 227).

The authorities cited by Mr. Justice Murphy show that he considered the allegations of conspiracy sufficiently broad to permit proof of predatory suppression of competition. *Associated Press* v. *U. S.*, 326 U. S. 1, *Montague & Co.* v. *Lowry*, 193 U. S. 38, and *Binderup* v. *Pathe Exchange*, 263 U. S. 291, cited at pages 226 and 227 of 332 U. S., were all cases aimed at a suppression of competition; none of them concerned the purchase of an outlet. *United States* v. *Reading Co.*, 253 U. S. 26, and *United States* v. *Crescent Amusement Co.*, 323 U. S. 173, cited at pages 227 and 228 of 332 U. S., were plain instances of predatory suppression of competition.

The argument of the Government, on the first Yellow Cab appeal, was likewise that the complaint alleged a conspiracy to suppress the competition of cab manufacturers other than CCM. Thus, the Government's brief on that appeal argued, at pages 27-28, that the "conspiracy" was "intended to prevent manufacturers of taxicabs other than CCM from selling their products".

But the Government's attempt in the Columbia Steel case to argue that the first Yellow Cab case "stands for the proposition that it is illegal *per se* for a manufacturer to preempt any market for his goods through vertical integration provided that an 'appreciable' amount of interstate commerce is involved", was rejected (334 U. S. at p. 521).

Columbia Steel held that "the legality of the acquisition * * * depends not merely upon the fact of that acquired control but also upon many other factors", and that "exclusive dealings * * * brought about by vertical integration or otherwise, are not illegal, at any rate until the effect of such control is to unreasonably restrict the opportunities of competitors to market their product" (id., p. 524).

Accordingly, this Court said in the Columbia Steel case of its decision on the first Yellow Cab appeal:

> "We do not construe our holding in the Yellow Cab case to make illegal the acquisition by United States Steel of this outlet for its rolled steel without consideration of its effect on the opportunities of other competitor producers to market their rolled steel. In discussing the charge in the Yellow Cab case, we said that the fact that the conspirators were integrated did not insulate them from the act, not that corporate integration violated the act. In the complaint the government charged that the defendants had combined and conspired to effect the restraints in question with the intent and purpose of monopolizing the cab business in certain cities, and on motion to dismiss that allegation was accepted as true. * * * A restraint may be unreasonable either because a restraint otherwise reasonable is accompanied with a specific intent to accomplish a forbidden restraint or because it falls within the class of restraints that are illegal per se. * * * Nothing in the Yellow Cab case supports the theory that all exclusive dealing arrangements are illegal per se.
>
> "A subsidiary will in all probability deal only with its parent for goods the parent can furnish. That fact, however, does not make the acquisition invalid" (pp. 521-523).

United States v. *Paramount Pictures, Inc.*, 334 U. S. 131, 174, likewise defines the proscribed specific intent as one aimed "to restrain or suppress competition":

> "In the opinion of the majority the legality of vertical integration under the Sherman Act turns on (1) the purpose or intent with which it was conceived, or (2) the power it creates and the attendant purpose or intent. First, it runs afoul of the Sherman Act if it was a calculated scheme to gain control over an appreciable segment of the market and to restrain or suppress competition rather than an expansion to meet legitimate business needs. United States v. Reading Co., 253 U. S. 26, 57; United States v. Lehigh Valley R. Co., 254 U. S. 255, 269-270. Second, a vertically integrated enterprise, like other aggregations of business units (Aluminum Co. of America, 148 F. 2d 416) will constitute monopoly which, though unexercised, violates the Sherman Act provided a power to exclude competition is coupled with a purpose or intent to do so."

The Government argues at pages 59-62 of its brief that the acquisition in the Columbia Steel case differed from those in the instant case because Columbia Steel involved a 100 percent acquisition whereas the instant case involved some acquisitions of less than 100 percent. But if the Government's attack is against a purchase to assure a market, the attack does not gain strength because the assurance is less than 100 percent. In the Paramount case, many of the vertical integrations with exhibitors included affiliations of less than 100 percent. The Government also argues, at page 59 of its brief, that Columbia Steel presented a "question of integrating stages of production." But in that case Mr. Justice Reed

said of vertical integration: "It is an indefinite term without explicit meaning" (334 U. S. at p. 525). Nor did the acquisition in the Columbia Steel case blend the stages of rolled steel production and the fabrication of such rolled steel products; and in the Paramount case the functions of producing or distributing motion pictures were quite distinct from that of exhibiting them.

II.

The District Court properly found that the defendants did not conspire to suppress any competition by automotive manufacturers other than CCM, or even to coerce purchases of CCM cabs.

The main competitors of CCM are General Motors, Chrysler, Ford and Packard. Nothing in the record indicates any predatory aim by any of the defendants to restrain or suppress the competition of these large automotive manufacturers or any others. If, therefore, as we argue, the specific intent which *per se* constitutes a violation of the Sherman Act is an intent to restrain or suppress competition, none exists in the instant case, and any question of violation of the Sherman Act would be relegated to the reasonableness of any restraint which arises even in the absence of such intent (*infra*, pp. 46-49). But, additionally, the District Court properly found that such stock acquisitions as did occur in the instant case were neither pursuant to "conspiracy" nor accompanied by any intent to coerce purchases of cabs from CCM.

The Government by retrospection covering a period of twenty years has attempted to discover a pattern of con-

spiracy. The business events, however, are hardly consistent with that attempt. The original "deal" which led to the formation of Parmelee was limited to two cab operating companies—Yellow and Yellow of New York. The subsequent purchase of Pittsburgh was opposed by Markin. The formation of Minneapolis resulted from the desire of the superintendent of a local cab company in receivership to continue his livelihood in the taxicab business. CCM and Checker had a relationship extending back to CCM's incorporation in 1922, and the evolution of Cab Sales was an adaptation to the changing conditions in the taxicab business in Chicago through 1941. CCM's 1929 investment of $1,000,000 in non-voting preferred shares of Parmelee was hardly the action of a conspirator whose purpose was to purchase control. The 1930 acquisition by CCM of a majority of Parmelee's common shares resulted from unforeseen business conditions, including the October 1929 stock market crash and subsequent depression, cab operating losses of Parmelee occasioned both by the depression and an unforeseen strike in Pittsburgh, the formation of a dominant Raskob-duPont stockholder group and the insistence of that group that Markin dispose of his Motor Cab stock. The argument of the Government that purchases of CCM cabs by cab operating affiliates followed immediately after such affiliation ignores the withdrawal of Yellow Cab Manufacturing Company from cab manufacture following its 1925 sale to General Motors; ignores the fact that except for Yellow in Chicago all such affiliates, or some of their predecessors, were pre-1929 customers of CCM; and ignores the quality of and acclaim accorded to CCM's Model K cab.

The evidence included both documents and testimony. Available witnesses testified as to events, conditions and reasons. The trial court believed that testimony. The Government's arguments, largely speculative, are in disregard of that testimony. In no event, on the evidence, should the findings of the trial court be disturbed on the ground of a "definite and firm conviction that a mistake has been committed." *United States* v. *United States Gypsum Co.*, 333 U. S. 364, 395.

III.

The Government's specifications of error do not urge that, absent a proscribed specific intent, unreasonable restraints exist; and no such unreasonable restraints do exist.

The specifications of error urged by the Government at pages 34-35 of its brief, relate only to the question of specific intent, and the Government neither includes in those specifications nor argues in the body of its brief that, absent such intent, the affiliation between CCM and the cab operating companies coupled with the sale of cabs by CCM to its affiliates constitute an unreasonable restraint. The question of unreasonable restraint, apart from a proscribed specific intent, is, therefore, not reviewable by this Court. *United States* v. *Crescent Amusement Co.*, 323 U. S. 173, 180.

But, even if the question were reviewable, no unreasonable restraint exists.

Nature of Restraint. On the evidence, the only arguable restraint is the fact of affiliation. But affiliation is not invalidated, said this Court in the Columbia Steel case,

by the result that "a subsidiary will in all probability deal only with its parent for goods the parent can furnish" (334 U. S. at p. 523). The following factors argue forcibly against even the existence of restraint. The cab purchases by Parmelee's cab-operating subsidiaries and Cab Sales, or some of their predecessors, were purchases either to fill the void caused by the withdrawal from cab manufacture of Yellow Cab Manufacturing Company, or were by pre-1929 customers of CCM. They were purchases of a superior purpose-built cab. They were purchases by cab operating companies accustomed to purpose-built cabs, from the only substantial and continuous manufacturer of purpose-built cabs. Comparisons with cars produced by other manufacturers showed that the CCM cab better served their large city needs. Earlier experiments with pleasure cars and post-war experience with pleasure cars confirmed this judgment that the CCM cab better served these needs. Thus, judgment, comparison and experience supplemented the normal practice prevailing among cab operating companies throughout the United States to continue the purchase of cabs from the same manufacturer in order to obtain the benefits of similarity in operation, maintenance and the like.

Comparable Market and Type of Product. In the absence of a specific intent which *per se* violates the Sherman Act when directed against any "appreciable segment of commerce," the question of reasonableness of restraint involves delineation of the appropriate market and type of product (*United States* v. *Columbia Steel Co.*, 334 U. S. 495, 508-511). The result of CCM's cab sales to the cab operating subsidiaries of Parmelee and to Cab Sales is to exclude sales of cabs, in a like amount, by automotive

manufacturers other than CCM—General Motors, Ford, Chrysler and Packard. The sales of these large automotive manufacturers are, however, national in scope and in comparison with the sales of any of them, the cab purchases by the cab operating affiliates of Parmelee and Cab Sales are infinitesimal. This argument that the impact of the sales by CCM to these cab operating companies must be measured against the national sales of these large automotive manufacturers is not in derogation of the decision on the first Yellow Cab appeal, since we are concerned now not with a proscribed specific intent directed against an appreciable segment of commerce, but with the measurement of the impact of these sales by CCM against those who constitute the excluded manufacturers.

Measurement involves not only the manufacturers excluded but also the type of product—here the automobile. The complaint refers to "motor vehicles" for use as cabs; the Government's brief, at page 62, refers to CCM's business as "manufacturing automotive vehicles"; and the Government argues that the cab operating affiliates of Parmelee and Cab Sales should use stock cars manufactured by the large automotive manufacturers rather than purpose-built cabs manufactured by CCM. When the product is defined as the automobile, the sales by CCM to Chicago, New York, Pittsburgh and Minneapolis become insignificant in relation to the sales of automobiles to those cities by the large automotive manufacturers. That the automobile is a sufficient limitation of the type of product is indicated by the statement in the Columbia Steel case that "the demand for the product must be measured against the market for all comparable products" (334 U. S. at pp. 510-511).

Municipal Regulation. The impact on the public in the localities which the operating companies serve is not the purchase but the use of the cabs. It is not the purchase, because the cabs are not bought for resale; it is the use, since the operating companies' use of the cabs constitutes the service to the public. This use is, however, subject to regulatory municipal control. In Chicago, for example, the municipal ordinances control the physical requirements of cabs, such as "the number, kind, type of equipment," "the color scheme and character of equipment," "physical and mechanical standards for taxicabs and their appurtenances." They also establish and control the rates. The quality of cabs used by the operating companies is subject to comparison with that of cabs used elsewhere in the United States. Similarly, the municipality in establishing rates for cab services may compare the price of such cab with the price of cabs produced by other manufacturers throughout the United States. In fact, the rates in the cities of Chicago, New York, Pittsburgh and Minneapolis are among the lowest in the United States.

IV.

In the event of reversal divestiture should not be directed.

The Government requests divestiture separating CCM from Parmelee and Cab Sales. This drastic remedy should in no event be applied without affording to the District Court opportunity after a full hearing to determine the requisite relief. See *Associated Press* v. *United States*, 326 U. S. 1, 22; *United States* v. *Crescent Amusement Co.*, 323

U. S. 173, 185. The prayer for relief in the original complaint did not seek a severance of Checker-Cab Sales and CCM. The historical relationship between Checker-Cab Sales and CCM goes back to CCM's organization in 1922. Nor were all the present affiliates of Parmelee acquired; for example, two, the New York and Minneapolis companies, were organized. Again, Parmelee and Chicago Yellow as well as CCM are public corporations with securities listed on the New York Stock Exchange. In the event of reversal, opportunity should exist for ample consideration of these and other matters by the District Court.

CONCLUSION

The judgment of the District Court should be affirmed in its entirety. As noted, the Government does not urge error in respect of that portion of the case, covered by the judgment, which relates to Parmelee's interstation transportation.

Respectfully submitted,

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